United States Court of Appeals

for the Second Circuit

JOINT APPENDIX

76-7067

In The

United States Court of Appeals

For The Second Circuit

UNITED STATES FIDELITY & GUARANTY COMPANY,

Plaintiff-Appellant,

vs.

ROYAL NATIONAL BANK OF NEW YORK and MERRILL LYNCH, PIERCE, FENNER & SMITH, INC.,

Defendants-Appellees.

B
P/S

JOINT APPENDIX

Volume IV, JA 901 - End

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TABLE OF CONTENTS

	Page
Docket Entries	JA1
Opinion of District Court Dated January 12, 1976 (Filed January 15, 1976) . . .	JA7
Complaint (Filed May 20, 1968)	JA19
Answer of Defendant Royal National Bank (Filed December 23, 1968)	JA26
Amended Answer of Defendant Royal National Bank (Filed December 30, 1968)	JA29
Answer and Cross-Complaint of Defendant Merrill Lynch (Filed June 24, 1968) .	JA34
Answer of Defendant Royal National Bank to Cross-Claim of Merrill Lynch (Filed December 30, 1968)	JA38
Plaintiff's Answers to Interrogatories of Defendant Merrill Lynch, Numbers 16, 20 & 21 (Filed June 1, 1970)	JA40
Pretrial Order Dated May 10, 1974 . .	JA43
Transcript of Trial Held on August 6, 7 8 & 11, 1975 Before the Honorable Henry F. Werker (Filed September 16, 1975)	JA60

Contents

Page

Exhibits Introduced During Trial:

1 — Letter of Thomas C. Rockafeller to W.E. Hutton & Co. With Enclosure . . JA635

2 — Security Payment From W.E. Hutton & Co. JA637

8 — Dates & Delivery Notices From Royal National Bank to Merrill Lynch Pierce Fenner & Smith JA638

10 — Credit Advice Forms to Frank Mazzochi, Jr. JA642

14 — Letter of September 21, 1966 From C.M. Hoffmann JA647

16 — Enclosures Attached to Foregoing Letter JA648

36 — Bank Account Agreement & Authorized Signatures JA652

42 — Front & Back of Check Signed by Frank Mazzochi, Jr. JA654

46 — Statement of Qualifications and Opinion of Thomas O. Rockafeller JA655

48 — Memorandum Stating Receipt of $5,000. by the Federal Reserve Bank . JA660

Contents

	Page
50 — Statement of Qualifications and Opinion of Frank Sixt	JA661
A — Bank Signature Card on Mutual Credit Union & Corporate Banking Resolutions .	JA666
B — Authorized Letters Signed by Frank Mazzochi, Jr.	JA676
C — Confirmation Orders From Merrill Lynch Pierce Fenner & Smith	JA680
D — Bank Statement on Account of F. Mazzochi, Jr.	JA684
F — Receipt Dated August 4, 1966 From Frank Mazzochi, Jr.	JA687
J — Letter Dated August 10, 1967 to F.B.I.	JA688
S — Letter to Mr. Stolz From Mr. McGraw With Enclosure	JA690
T — Memorandum From Mr. McGraw to Peter Walter With Notes	JA693
CC — Statement of Qualifications and Opinion of Vincent P. Fay	JA696

Contents

Page

18 — Deposition Testimony of Wallace Nathan Pages 3 to 22 . . . . . JA701

13 — Criminal Trial Testimony of Robert I. Kayner Pages 68 to 129 . . . . . JA715

44 — Deposition Testimony of Anna Mazzochi Pages 7-26 . . . . . JA731

44A — Deposition Testimony of Frank Mazzochi, Sr. Pages 7-28 . . . . . JA749

49 — Deposition Testimony of Conrad Hoffman Pages 3-40 . . . . . JA771

R — Deposition Testimony of Irving H. Stolz Pages 3-48 . . . . . JA790

Z — Deposition Testimony of Robert I. Kayner Pages 4-104 . . . . . JA821

Deposition of Rudolph J. Santoro Pages 4-115 . . . . . JA888

AA — Deposition Testimony of Edward I. McGraw Pages 3-199 . . . . . JA939

Y — Deposition Testimony of R.G. Hawthorne Pages 3-50 . . . . . JA1050

Contents

Page

51 -- Deposition Testimony of Arnold Dutcher Pages 3-32 . . . . . JA1079

Q — Deposition Testimony of Peter Walter Pages 3-58 . . . . . JA1101

X — Deposition Testimony of Angelo D. Dellatte Pages 4-183 . . . . . JA1131

WITNESSES

Rudolph Santoro:
Direct JA69
Cross JA170
Redirect JA192
Recross JA202

William Carter:
Direct JA209

Robert I. Kayner:
Direct JA216
Cross JA305
Redirect JA338

Stephen Weis:
Direct JA292
Cross JA295

Thomas O. Rockafeller:
Direct JA362

Contents

Cross JA385
Redirect JA463

Frank W. Sixt:
Direct JA485
Cross JA488, JA528

Voir Dire JA460

brought in?

A That was fixed in my mind.

Q Didn't you tie up the ownership of Frank Mazzochi's family of these different treasury notes?

A It is not my job to tie up anything. I just perform the functions of the Loan Department.

Q In other words, once you get the okay--

A That is it. I just followed through with the procedure.

Q Did Mazzochi come in with further treasury notes?

A Yes. To my recollection he came in that afternoon with another 60,000, I believe it was.

Q Yes.

A The same procedure followed. I referred him out to Mr. Kayner.

Q Did Kayner come over to your window again?

A Yes, and he said it was okay to sell them.

Q For Frank Mazzochi or for Frank Mazzochi's family?

A For Frank Mazzochi.

Q You never heard anything about Frank Mazzochi's family mentioned at that time?

A Not to me.

Q On the second request to sell?

A No, sir.

Q And that took place the same afternoon?

A That took place the same afternoon.

Q About four or five days later, did Mazzochi come in again with treasury notes for sale?

A I don't recall when, but he did come in another time. That was after that initial transaction for, I believe, 70,000 he had in his possession and again I referred him to Mr. Kayner who then gave me the verbal okay to sell them before we got the written authorization from Mr. Mazzochi.

Q Did you go to Kayner's desk?

A Kayner came over to the window after I referred Mr. Mazzochi out.

Mr. Mazzochi came in each time with the treasury bills, he gave me the treasury bills and then went out to Mr. Kayner's desk.

Q But Kayner had to give you the okay, you wouldn't take Mazzochi's word?

A No.

Q So Kayner himself came over?

A Right.

Q You had had three conversations already with Kayner as of the time that the $70,000 in treasury notes was brought in?

A Right.

Q About a month later, am I correct that another 70 or 72 thousand dollars in treasury notes were brought in by Mr. Mazzochi?

A By Mr. Mazzochi.

Q Did you get an okay?

A At this time Mr. Kayner was not with the bank as far as I can recollect and I referred it out to Mr. McGraw, another officer on the platform who sits behind Mr. Kayner and I explained the situation to him, that Mr. Kayner had okayed the first two previous transactions with Mr. Mazzochi and he was in with another $72,000 worth and Mr. McGraw gave me the okay to sell them.

Q That was a verbal okay?

A That was a verbal okay.

Q When did you get the written approvals from the credit officer?

A As soon as I typed up the receipts and forms going down with the delivery, I brought it out to the credit officer and he signed them.

Q So that you got three written approvals from Kayner and you got one from McGraw, is that correct?

A Correct.

Q Did you have any conversation with Mazzochi when

he brought in the $60,000 around August 8th or 9th of 1966?

A No.

MR. HART: I am sorry. I think the witness' testimony was that that second batch was 70,000, not 60,000.

MR. KOMOROFF: Off the record.

(Discussion off the record.)

BY MR. KOMOROFF:

Q Mr. Santoro, the way I see the picture, there were four separate transactions or were there three?

A Four.

Q There was a 10, a 60, a 70 and a 72?

A Let me clarify this. He came in four separate times but the first 10 and 60 were put through as one transaction because he came in the same day with him so I was able to deliver down 70,000 the first time.

In essence he came in four separate times but three actual transactions.

Q Was there a difference of a few hours between the time he presented the $10,000 certificate to you and he presented the $60,000?

A Yes, there was.

Q But they both happened the same day?

A They both happened the same day.

Q Did you get two okays from Mr. Kayner on this or just one?

A Two.

Q Two okays?

A Yes.

Q Then you got another separate okay from Mr. Kayner verbally and in writing in connection with the $70,000 which was four or five days later?

A Correct.

Q So I would say then by about August 9th or 10th, you acting for the bank, had received about $140,000 worth of government treasury notes that Frank Mazzochi presented to you for sale, am I correct?

A Correct.

Q Did you ask Mr. Mazzochi at the time he had presented the $140,000 on these three occasions as to whether he owned these certificates or whether his family owned them or somebody else owned them?

A No, I had not made any mention to him whatsoever in regard to the first $140,000.

Q That was not your job?

A No.

Q It was the responsibility of Mr. Kayner?

A Right.

Q After the treasury notes were left with you, did you do anything further on behalf of the bank?

A Well, at the time before I sold them to Merrill Lynch I called up the Federal Reserve Bank, the Treasury Bill Division to see if they had what I call fliers out on them.

In other words, these would be reports that they normally get from Washington on stolen treasury bills listing numbers.

I called the Federal Reserve Bank and spoke to somebody in their Treasury Bill Division, I don't remember who, and was informed there were no fliers held by the Federal Reserve Bank.

Q What did you mean by that?

A They didn't have any fliers on the numbers I had given them.

Q You gave them serial numbers?

A I gave them a set of numbers.

Q You read this off to somebody at the Federal Reserve Bank?

A Correct.

Q Is that the bank on Maiden Lane?

A 33 Liberty Street.

Q Do you know who you spoke to?

A No, sir, I don't.

Q Did you make three such telephone calls to the Federal Reserve Bank?

A Four.

Q I am concentrating on the 140,000.

A Yes, there were three calls.

Q Three separate calls?

A Right.

Q And the first time you mentioned one serial number?

A For the $10,000 note.

Q Whomever you were talking to, to this Federal Reserve Bank representative, you mentioned that number?

A Yes.

Q The second time you called, you read off the serial number on the $60,000 transaction?

A Yes.

Q And then you made another call to the same place four or five days later when you had that $70,000?

A Correct.

Q Did you ask for somebody there that you knew?

A No. I just asked for the Treasury Bill Division of the Federal Reserve Bank.

were talking to in the Treasury Bill Division, 26 serial numbers on these treasury notes that Mazzochi had brought in, right?

A Right.

Q Did you check at any other source?

A No, sir.

Q Anywhere else?

A No, sir.

Q Did you do anything else to find out if any one of these 26 treasury notes were among the missing or stolen?

A No, sir.

Q Did you discuss this topic of ownership or missing certificates or stolen certificates with Merrill Lynch when you called them up?

A No, I didn't.

Q Who did you call up at Merrill Lynch?

A Bill Carter. I still call Bill Carter.

Q What is his function over at Merrill Lynch?

A I believe he is a customer's man for the handling of sale of treasury bills and government bonds. I am not positive on that. I know he is the gentleman we did call over there to handle the transactions.

Q Did you tell Bill Carter that you had already checked with the Federal Reserve?

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January. I was in Credit--I believe it was a year and one half under Mr. Fehling.

Q Had you ever checked on Frank Mazzochi while you were in Credit up at 149th Street?

A No.

Q Had you ever checked on Mutual Credit Union?

A No, not to my recollection.

Q Had you ever checked on anyone knowing their account?

A Let me put it this way. In a year and a half I make thousands of checks. I just don't know whether I did one way or the other.

Q You have no recollection?

A No recollection. There might have been an occasion where there might have been a credit inquiry on one of these accounts. I sometimes got 22, 25 of them a day. It would be impossible for me to remember.

Q What was your image of Frank Mazzochi on that day in August when he brought in the $70,000, the first batch?

A What do you mean by image?

Q Did he look like a substantial customer to you?

A He was very well dressed. He made an excellent appearance. He spoke very well. By personal appearance you can't tell whether he is substantial or not.

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Q I am talking about financial responsibility and only that.

What was your mental image of Frank Mazzochi's financial responsibility personally when he presented the first $70,000 in treasury notes to you?

A I can't say how you could determine a man's financial background just by looking at him.

Q Did you have any knowledge when you got the first batch of $70,000 from Mazzochi as to his personal financial stability?

A None whatsoever.

Q You knew nothing about him?

A No.

Q Did you have any personal knowledge as to any of these other accounts with which he was connected?

A No personal knowledge.

Q You had no knowledge at all?

A No.

Q In other words, when you went through the mechanics of selling these $140,000 of securities, the first two batches, you were just doing something in furtherance of an order that you had gotten from Kayner?

A Exactly.

Q What facts and circumstances prompted you to call

Q He assumed there was a good title to all of these securities?

MR. HART: What Mr. Carter assumed or not assumed is not for this witness to say.

Q You assumed it was a good title?

A Yes.

Q Did Kayner tell you to call the Federal Reserve Bank on any of these transactions?

A No, he didn't.

Q Did McGraw tell you the same?

A No, he didn't.

Q Did Mazzochi have a personal bank account at the bank on August 4th or 5th when he brought in the first batch of 70?

A No, he didn't.

Q You know that to be a fact?

A Yes.

Q He personally was not a customer of the bank when he brought in the first $70,000?

A When you say customer of the bank--

Q Personally.

A Personally, he did not have his own personal account.

Q Was there any talk between you and Mr. Kayner

or any other bank officer concerning what was to happen to the proceeds?

A I was informed by Mr. Kayner that the proceeds would be used to open up a personal checking account for Mr. Mazzochi.

Q Did you discuss this question with Mr. Mazzochi?

A No, I did not.

Q In September when the $72,000 were brought in, he already had an account?

A Right.

Q In other words, the account was opened when he already brought in $140,000?

A My recollection, the account was opened with the proceeds of the first $70,000.

Q Do you have any knowledge of what happened to the proceeds in those accounts?

A None whatsoever.

Q Did you know in August of 1966 that Mazzochi came in about a dozen times or more with checks made out to cash where he gradually withdrew all of the proceeds out or substantially all from this account?

A No, I didn't.

Q The checks that came from Merrill Lynch on the sale of these treasury notes, were the checks made out to

your bank or made out to Mazzochi?

A They were made out to the Royal National Bank.

Q What happened to those checks?

A I used them to credit the account of Frank Mazzochi, Jr.

Q In other words, the moneys really belonged to Frank Mazzochi and you immediately credited the proceeds to the Frank Mazzochi account, am I correct?

A Correct.

Q And you immediately notified Mr. Mazzochi?

A Right.

Q By a credit memorandum?

A Correct.

Q On each of these occasions, the 10, the 60 and the 70, we are leaving out temporarily Mr. McGraw, did you get a verbal and written okay from Mr. Kayner before you delivered the securities to Merrill Lynch for sale?

A Yes.

I sold them one day. They would be delivered the next day. The day I sold them I received a verbal okay before I called in the same. That same day I typed up all necessary forms, delivery forms and credit advices that Mr. Kayner signed before the treasury bills were delivered down the following morning.

Q Do you know of any bank officers or employee who socialized with Frank Mazzochi and saw him off bank premises?

A No.

Q Did you ever meet anybody in Frank Mazzochi's family?

A No.

Q Like the father and the mother or a sister or a brother or sister-in-law or brother-in-law?

A Nobody at all.

Q Had you up to August 1966 met any friends of Frank Mazzochi?

A None whatsoever.

Q Were you known and friendly with the officers of Mutual Credit Union?

A No, sir.

Q You didn't know them?

A No.

Q As of August 1966, is it fair for me to state you had no knowledge as to Frank Mazzochi's background?

A Correct.

Q And you hadn't discussed with anybody in the whole world Frank Mazzochi's background up to the time that he presented the first $10,000 treasury note?

talk at all?

A None whatsoever.

The last transaction I remember asking Mr. Mazzochi, vaguely, where he was getting this money from, just in a joking manner and he smiled at me and that was the extent of it.

Q You mean on the 72,000 or the 70?

A 72,000.

Q That was in September already?

A Yes.

Q Was that the one that McGraw okayed?

A Yes.

Q And you asked Mazzochi this after McGraw had given you the okay to sell?

A No, when he initially came in with it. At that time we can say we were on a first name basis and we used to have small talk together, nothing important, how was your weekend, period.

Kidding around when he came in with the last 72,000 I asked him where he was getting all these treasury bills from and he smiled and didn't say anything.

Q He didn't say anything?

A Not a word.

Q What spurred on your making this inquiry?

A The initial 140,000 didn't seem like it was anything in any great capacity but then when the next 72,000 came in, I was just wondering to myself whether it was ever going to end.

Q Wasn't there some commotion at the bank? Mr. Kayner wasn't at the bank any longer when the $72,000 was brought in, is that correct?

A No, he wasn't at the bank any longer.

Q Why was Mr. Kayner removed from the bank or transferred somewheres else?

A I don't know. I believe Mr. Kayner at that time was promoted and made manager of the Queens branch.

Q Mr. Kayner testified last week that he went to the Montague branch in Brooklyn, am I correct?

A I really don't remember.

Q Wasn't there some talk about the fact--

MR. HART: I am sorry, Mr. Komoroff. The record will show what it shows about Mr. Kayner's testimony. I believe he testified first he went to Queens, then from Queens he went to the Montague Street branch.

MR. KOMOROFF: Just the reverse. However, you have your recollection and I have mine.

MR. HART: Whichever of us is right, the

with Mazzochi and said it was okay to sell?

A No.

Q Wouldn't that be normal procedure?

A I don't remember.

Mazzochi brought in the last batch of treasury bills for me to sell. I brought them out to Mr. McGraw.

I don't remember whether I brought them out myself or Mazzochi went out to see Mr. McGraw, but I do remember speaking to Mr. McGraw about the transaction and stating it was now 72,000 and it would bring it up to 212--I believe I brought it out myself because Mr. McGraw wasn't familiar with the transaction and I wanted to fill him in on the details, but I don't recall the sequence of events.

Q Did McGraw give you the okay to sell at his desk or was it at your window or some other place?

A At his desk.

Q In other words, Frank Mazzochi went directly to your window and presented the $72,000 in bills?

A Correct. The same way he did each time.

Q Didn't Mazzochi know that he had to get an okay from an officer before you could sell them?

A Yes. His normal procedure was he gave me the treasury bills, then he went to the officer.

In this case I went out with the treasury bills and I believe Mr. Mazzochi was with me because Mr. McGraw was not familiar with the situation, so I had to fill him in with the background.

Q In other words, you had these bills in your hand when you went out to Mr. McGraw?

A Correct.

Q And McGraw asked you no questions?

A He asked me questions. He asked me to explain the transaction to him.

Q Tell me.

A I said I brought it out to Mr. McGraw and I told him that Mr. Mazzochi had previously sold $140,000 worth of treasury bills.

He wanted to sell another 72,000.

I explained we were now up to 212,000. Mr. McGraw asked me if he had an account with us and I told him he had opened an account with the proceeds and he gave me the verbal okay to sell the last 72,000.

Q Was Mazzochi standing there?

A No, Mazzochi was back at the window.

Q Mazzochi waited at the window?

A Right.

Q In other words, there was no conversation between

Mazzochi and McGraw in connection with the sale of the $72,000?

A None that I remember.

Q Mazzochi on this $72,000 sale was dealing only with you then?

A Could you rephrase that?

Q Mazzochi you say brought you the 72,000 in securities?

A Correct.

Q Mazzochi was not sent by you to get the okay of a credit officer?

A No.

Q You went to McGraw and you had a conversation with McGraw and McGraw said okay, sell them?

A Correct.

Q So Mazzochi had no contact with Mr. McGraw before McGraw gave you the verbal okay?

A I explained all the details and all the facts to Mr. McGraw and based on what I told him, he could see nothing wrong with issuing another okay because he was just following what Mr. Kayner had previously been doing.

Q Did you inform Mr. McGraw that Mr. Kayner had previously okayed the previously bills?

A Yes.

Q At the time McGraw gave you the okay for the 72,000, he knew that Kayner had okayed the prior 140,000?

A Yes.

Q Was it on the same basis?

A I don't know. You would have to ask Mr. McGraw. I don't know what he based his decision on.

MR. MARKOWITZ: Did you ever ask Mr. Mazzochi why he didn't bring in the entire $212,000 in treasury notes at one time rather than on four separate occasions?

THE WITNESS: No.

MR. MARKOWITZ: Didn't that seem unusual to you?

THE WITNESS: A lot of things seem unusual to me but I have a job to do and I do my job.

MR. MARKOWITZ: It didn't arouse your curiosity at all as to why he brought it in on four separate occasions?

THE WITNESS: No.

MR. MARKOWITZ: It had no impact on you at all?

THE WITNESS: The only impact was when he brought in the last 72,000 and I thought to myself will it ever stop.

MR. MARKOWITZ: What caused you to become a little bit more alert when he brought in the last 72,000?

MR. HART: Object to the word "alert."

MR. MARKOWITZ: What caused you to ask Mr. Mazzochi on the occasion when he brought in the last $72,000 where did he get all this money from or where did he get all these treasury notes from?

THE WITNESS: Just based that the amount was getting high. It had passed $200,000 and in my opinion it seemed to be getting a little too high.

MR. MARKOWITZ: What facts caused you to form that opinion?

THE WITNESS: It is a large sum of money from treasury bills to keep coming in to be sold. 140,000 did not phase me at all. It is common occurrence in working in a bank with that sum of money. Once the 72 came in and now I was dealing with Mr. McGraw, I was under the impression Mr. Kayner was far familiar with the situation since he had initialed the first two transactions and I became a little leary of it and I wanted to inform Mr. McGraw of my suspicions; not really suspicions; my opinion, and that was the extent of it.

MR. MARKOWITZ: Did you voice these suspicions to Mr. McGraw?

THE WITNESS: I didn't say exactly I was suspicious. Let's say I informed him it was up to $212,000 and you are getting into a field of a substantial sum of money in treasury bills alone.

MR. MARKOWITZ: How did he react to that?

THE WITNESS: He didn't say anything to me definitely that I can remember but I believe he said he would check into it.

MR. MARKOWITZ: Did he say however to sell these, these $72,000 worth?

THE WITNESS: He gave me the okay to sell them.

MR. MARKOWITZ: Immediately?

THE WITNESS: Within five or ten minutes.

BY MR. KOMOROFF:

Q Did McGraw say he'd check into this question?

A No, he said he was. There was actually nothing much he could check into. The previous transactions had been okayed by Mr. Kayner. The man was president of the Mutual Credit Union. He had affiliate accounts. There was no reason why we shouldn't sell them for him.

MR. MARKOWITZ: Did you check these amounts

in the affiliated accounts?

THE WITNESS: No.

MR. MARKOWITZ: Do you recall the names of these affiliated accounts?

THE WITNESS: I have heard them mentioned since testimony at the previous trial.

MR. MARKOWITZ: Did you check into the balance of any of these affiliated accounts?

THE WITNESS: No, I didn't.

MR. MARKOWITZ: Or any time before that?

THE WITNESS: No.

MR. MARKOWITZ: Do you know the average balance of the Mutual Credit Union?

THE WITNESS: No, I do not.

MR. MARKOWITZ: Did you check into that?

THE WITNESS: No, I did not.

BY MR. KOMOROFF:

Q Were these government securities being sold for this affiliated accounts?

A No, they weren't.

Q They were being sold--

A For Frank Mazzochi.

Q You had no personal knowledge as to Frank Mazzochi's own net worth?

what had happened to that $140,000?

A I did not.

Q You didn't know that Mazzochi was coming in every other day and pulling out sums of $10,000 or more in cash?

A I did not.

Q When did you find that out?

A That Mazzochi was taking the funds out?

Q Yes.

A Well, based on the last transaction when he sold the $72,000 and after the preceding day, I was told to put the money into a suspense account, at that time I was informed that there had been a lot of withdrawals in substantial amounts from the account.

Q Who told you that?

A I believe it was Mr. McGraw. I am not positive on it.

Q Did you have any talks with Mr. Dellatte about the Mazzochi sale of these securities?

A Mr Dellatte?

Q Yes.

A None whatsoever.

Q When the funds were not released by the bank and put into the suspension account, were you involved in any

way in conversations with Mazzochi?

A Yes. Mazzochi came in to me and he wanted to know if the 72,000 was being credited to his account and I informed him the money was being put into a suspension account and he would have to see Mr. McGraw.

Q Were there any further talks between you and Mazzochi?

A He came in each day and asked me if the money had been credited to his account. I told him no and he went out to see Mr. McGraw.

Q Was that the full extent of your participation in the situation involving the freezing of the moneys?

A Yes. When I got the check in, I just put it into the suspense account. That is the extent of what I did.

Q Did you discuss the matter of the suspense account with anybody else at the bank other than Mr. McGraw, any other bank employee?

A I honestly don't remember.

Q Mrs. Moscatello?

A In the course of conversation there might have been some mention but there is nothing I can recollect specifically.

Q Any officers in the back of the bank?

A No.

Q Any officers in the front of the bank?

A No. I really don't remember.

Q Tell me, do you know what a confirmation from a stock brokerage house looks like?

A Yes.

Q When did you see one for the first time?

A When I was working in the Trade Bank & Trust Company Securities Department.

Q Was this almost a daily occurrence?

A When I was working with Trade Bank in their Securities Department, there were quite a few stock transactions. They had a few customers that liked to buy and sell frequently, so we worked through a couple of different brokers and I quite frequently saw the stock confirmations of sales and buys.

Q And you were familiar with the appearance of a confirmation ticket from a stock brokerage house in August of 1966, am I correct?

A You are correct.

Q You had seen many of them before that time?

A Correct.

Q Did you suggest to any of the bank people, to Kayner or to McGraw that if they had asked for the pre-

sentation of such an instrument from a stock brokerage house?

A No, I did not inquire as to that.

Q But you knew that fact at the time, that this signifies ownership of securities?

A Correct.

Q Was there any talk at the bank in August or September of 1966 about Mazzochi's failure to produce a certificate showing ownership of the treasury notes?

A None that I know of.

MR. MARKOWITZ: Did you suggest to Mr. McGraw on the occasion of the sale of the $72,000 worth of treasury notes, he should ask Mr. Mazzochi for a confirmation such as a stock confirmation showing that he purchased these?

THE WITNESS: No, I did not.

MR. MARKOWITZ: Or on any previous occasion?

THE WITNESS: No.

BY MR. KOMOROFF:

Q After the moneys were frozen, did you have any talks with McGraw about checking into the ownership of the $72,000 in bonds?

A No, sir.

Q Did he tell you there was some activity by him

Q All these talks you had with him, why didn't you say why doesn't he present a confirmation of sale to you and that would clear up the matter?

A It was out of my hands. It was being handled by the front platform.

Q Did you make any suggestion to somebody at the front platform, McGraw or anybody else?

A No.

Q You didn't say anything like that?

A No.

Q Did you think it would be presumptious on your part to do so?

A Not presumptious but it just wasn't done.

Q Wasn't that the safest procedure to follow?

MR. HART: Objection. You are getting into areas the witness is just not qualified.

MR. KOMOROFF: He said he is familiar with these papers. He knows what a confirmation ticket is like.

Q A confirmation certificate is like a bill of sale?

A Correct.

Q Have you ever seen a billing?

A You get a confirmation ticket for a sale of

have indicated ownership by him?

MR. HART: Objection. I will not let the witness answer that question. It calls for a conclusion.

Q Do you know if any request was made by you from Mazzochi to present a confirmation similar to these?

A There was no request made by myself.

Q In connection with any of the four transactions?

A In connection with any of the four transactions.

Q Did any of the bank officials in the Loan Department like McGraw, or Kayner, or Ludlow, make any such request from Mr. Mazzochi, if you know?

A I don't know.

Q Was there any such talk between you and any one of the officers in the Loan Department of the bank?

A No, there was not.

Q Was there any talk at any time concerning the fact that Mazzochi had ever been asked to present a confirmation of purchase from a recognized stock brokerage house?

A Not to my knowledge.

MR. KOMOROFF: I ask that there be marked for identification--

MR. HART: This is the second time these

He signed authorized letter authorizing us to sell them for his account.

Q Yes.

A I don't understand what else you are looking for.

Q When he came in with these bonds, did you take it for granted he could sell these bonds?

A He came with these bonds. He was referred out to an officer who gave me the okay to sell them. To my best recollection, the officer knew he was the owner of these bonds otherwise he wouldn't have authorized the sale.

Q Do you know if any inquiry was made by anybody at the bank with respect to Mazzochi's authority to use the $140,000 in proceeds realized on the first sales?

A None that I know of. .I am not familiar with that part of the transaction.

Q Or on the $72,000 that came in September when the balance of the bonds were sold?

A I have no knowledge of that.

Q Did you have any talk in connection with the first three transactions with Mr. Kayner about Mazzochi's need to produce a confirmation slip from a stock brokerage house?

A No, I did not.

Q And you didn't have such a talk with Mr. McGraw either?

A No, I did not.

Q Did you have any prior dealings with Mr. Mazzochi of the size and scope of these dealings in August and September?

A I myself did not.

Q Do you know of any other bank employee who did?

A None that I know of.

Q Do you know if there are any such transactions of the size and scope of these which involved any of the affiliated accounts that Mazzochi was tie up with?

A None that I know of.

Q Did you have any familiarity with Mazzochi's earlier banking transactions with the Royal Bank up to August 4th of 1966?

A No, I did not.

Q Do you have a status now as an officer at the bank? Do you have some title like that?

A Yes, I do.

Q What is it?

A Assistant cashier.

Q And you are under Mr. Walter?

A Definitely.

Q For how long have you had that title?

A Since July of this year.

Q Mr. Santoro, am I correct in stating that the Loan Department at the bank is separa and apart from the Credit Department?

A You are correct.

Q Did you have any talks with anybody in the Loan Department in 1966 as to where or how Mazzochi had obtained these United States Treasury Notes?

A No, I did not.

Q Or if the proceeds really belonged to him?

A No, I did not.

Q Whose responsibility would that be, would that be in the Loan Department or the Credit Department?

MR. HART: Responsibility for what?

MR. KOMOROFF: Of checking as to where or how Mazzochi had obtained these treasury notes and if the proceeds really belonged to him.

Q Is that credit or is that loan?

A It wouldn't have anything to do with the Credit Department.

Q So it would be the Loan Department?

A It would be the Loan Department.

Q That would go back again to Mr. Kayner and Mr.

McGraw?

A Right.

Q Any inquiries with respect to if or what Mazzochi had paid for these treasury notes, would that also be within the responsibility of the Loan Department?

A What he initially purchased and bought is no concern of ours.

Q But the responsibility for making such an inquiry before the approval is obtained from loan, that is within the domain of the Loan Department, is that correct?

A Correct.

Q You were working in the Loan Department, am I right?

A Correct.

Q And Kayner and McGraw were in what department?

A They were officers on the credit platform. I was working in the Credit Department when Mr. Landberg got sick and I was put in the Loan Department to cover for him while he was ill.

Q The department that McGraw and Kayner were in, that is the Loan Department?

A They are not in any department. They are credit officers. They oversee all departments.

Q Who makes the credit investigations?

A Into background of customer's accounts, that is done by the Credit Department.

Q But there is a difference between the Credit Department and the credit officers?

A Right. The Credit Department just does the functional work. The credit officers make the decisions based upon what they arrive at.

Q All decisions with respect to Mazzochi's ownership of these treasury notes where he bought them or how he got them or if he had the right to use the proceeds after the bank sold them, that was within the responsibility of the credit officers?

A Correct.

Q That would be Kayner and McGraw?

A Correct.

Q What would be the procedure when you got a check from Merrill Lynch in a certain amount on the sale of these treasury notes, did the moneys immediately go into Frank Mazzochi's own account?

A They were credited right to his checking account.

Q Immediately?

A By immediately, the checks come in late in the afternoon. Normally the tickets wouldn't be processed through until the next morning until we could get them to

A When I had been making the inquiries. That was the only occasion I had when I worked in the Security Department of Trade Bank and that was a good three or four years prior to when I was handling securities for Royal National.

Q Were these daily occurrences?

A No.

Q Were they rare occurrences?

A They were rare occurrences.

Q And also rare at the Royal Bank for you too?

A Correct.

Q But you felt that was the only place where you could check about whether any of these 26 serial--any of these 26 treasury notes were missing or stolen?

A Unless I wanted to call Washington direct. I could have called the Treasury Department in Washington but it was my assumption that the Federal Reserve Bank had fliers on these sent to them by the Treasury Department in Washington so it was not necessary to put a call in to Washington, D. C.

Q Had you ever in your experience called Washington?

A No.

Q To your knowledge,had any officer called Washington, any officer at the Royal Bank or the Trade Bank ever

called Washington to make an inquiry?

A Not that I know of.

Q Where would such inquiry be made in Washington?

A At the Treasury Department.

Q What part of the Treasury Department?

A The Treasury Department, I imagine, is broken down into various sections. There is one division that handles government treasury bills, the Government Bond Division, or whatever you call it. The only way to find out would be to call up and ask information.

I never called Washington before so I wouldn't know who to speak with. They have a Government Bond Division in Washington.

Q How do you know that?

A Just from prior knowledge.

Q Prior experience?

A Not dealing with it. Just what I learned and heard.

Q Had you ever had any contact directly with a government department that handled government securities?

A In Washington?

Q Yes.

A No. No contact whatsoever.

Q Only in New York?

A Only in New York.

Q And you felt it was sufficient to check with the listings that they had in the New York Federal Reserve?

A Correct.

Q What you are telling me now, did you have this knowledge in 1966 in August?

A Could you repeat this?

Q You have just been telling us there is a way to check on this in Washington.

A Correct.

Q Did you have this knowledge when Mazzochi came in the first time?

A In 1966?

Q Yes.

A Yes, I did.

Q Did it occur to you that would be a good way to check?

A Since I had called the Federal Reserve, I didn't see any reason to.

Q Did you ever hear of the Office of Public Debt?

A The Office of Public Debt?

Q Yes.

A I am not familiar with it.

Q Have you recited already in substance all of the

Q Did you tell Mr. Carter or made the note to him that you are only here temporarily filling in?

A No. I had informed him Mr. Landberg was out ill and I was replacing him for the time being.

Q Is there any reason he addressed the confirmation slips to the attention of Mr. Landberg rather than to your attention?

A Mainly, I imagine, for the reason that they have Mr. Landberg down as the head of the Securities Department and all the documentation should go to his attention. That is the main reason I can think of.

Q Did you talk to anybody else over at Merrill Lynch aside from Mr. Carter?

A No, he was the only one.

Q Concerning all three or four of these transactions?

A Correct.

Q Did you ever mention the name of Mazzochi to Mr. Carter?

A No, never mentioned his name.

Q As far as you know, Mr. Carter knew he was selling treasury notes for the Royal National Bank?

A Correct.

Q Did he ask you whether you had checked into the

all objections, except as to form, are reserved to the time of trial.

IT IS FURTHER STIPULATED AND AGREED that counsel for plaintiff shall furnish a copy of the within deposition to counsel for defendant Royal National Bank of New York, without cost.

oOo

E D W A R D I. M c G R A W, called as a witness by plaintiff, being first duly sworn by the Notary Public (Roberta Cummings), testified as follows:

EXAMINATION BY MR. KOMOROFF:

Q Would you state your name for the record, please?

A Edward I. McGraw.

Q Where do you live, Mr. McGraw?

A 61 Beucler Place, Bergenfield, New Jersey.

Q How long have you been employed by the Royal National Bank?

A About 17 years.

Q How long have you been employed at the East 149th Street branch?

A The same time, 17 years.

Q Do you have a title there?

A Assistant vice president.

Q How long have you been assistant vice president?

A About ten years.

Q Are you specially trained for certain work at the bank?

A Yes, sir.

Q What is that?

A Loans and credits.

Q And are you what is known as a loan officer?

A That is correct.

Q Were you employed as a loan officer at the East 149th Street branch in August, September and October of 1966?

A Yes, sir.

Q Do you know Frank Mazzochi, Jr.?

A Yes, sir.

Q Did you know him during the summer of 1966?

A Yes, sir.

Q Before then, did you know him?

A Yes.

Q For about how long?

A Probably two years.

Q Did you know him by name?

A Yes, sir.

Q Did you call him Frank or Mr. Mazzochi?

A Frank.

Q Who introduced you to him?

A I believe through the Mutual Credit Union, he became an officer in the Mutual Credit Union and that's how I met him.

Q Did you as part of your duties as a vice president of the Royal National Bank handle this Mutual Credit Union account?

A That's right.

Q Were you familiar in 1965 and 1966 with the average balances in this Mutual Credit Union account?

A Yes.

Q And with the loan record, too?

A Yes, sir.

Q Can you tell us approximately what the average daily balances were in 1965 in this Mutual Credit Union account, approximately?

A The daily, I couldn't tell you. We work on a monthly average. This is our yardstick.

Q What did that come to?

A It would be in the low to moderate four-figure area.

Q By low, you mean anywhere from 1,000 to 5,000?

A In that area.

Q Is that the average?

A It would average out around there.

MR. KOMOROFF: By the way, Mr. Hart, do you have any records here with respect to average daily balances and the average balance cards kept by the bank which show the monthly balances?

MR. HART: Not yet. We will try to get those for you. I will have to make those arrangements.

MR. KOMOROFF: Before we get started with Mr. Gutstein and Mr. Ludlow, will you make an effort to get those, please?

MR. HART: Yes.

BY MR. KOMOROFF:

Q Can you give us an idea as to the average loans that were effected by your bank to the Mutual Credit Union during the period of 1965, about?

A Well, it would be somewheres around 7,500, 10,000, in that area.

Q Was that the average maintained during 1965 and 1966?

A The average?

Q Yes.

A Well, I don't know how there is an average on it really.

The loan would come out for a certain amount and

then run for three months and probably reduce and be renewed for another three months.

Q What was the top amount?

A I think it was 7,500 or 10,000.

Q What was the bottom amount?

A Well, probably 1,500, 2,000, something like that.

Q Did the Mutual Credit Union put up any security?

A No.

Q Never put up any security?

A Never.

Q Did any individuals sign as guarantors or co-makers on these loans?

A Not on those loans.

Q Did the bank maintain a credit file?

A Yes.

Q Is that in existence now?

A Yes.

Q Where is it?

MR. HART: I have it here.

Q Now, you say you met Mr. Mazzochi because he became an officer of the Mutual Credit Union; is that right?

A That is correct.

Q Do you remember the occasion when you met him?

A I believe he came in to arrange--he and one of the other officers of the Credit Union came in to arrange a loan.

Q You mean to the Mutual Credit Union?

A To the Mutual Credit, yes.

Q Did Frank Mazzochi sign asco-maker on this loan?

A No, sir.

Q Did you ever have any personal dealings up to August 1966, with Frank Mazzochi in his personal capacity?

A No.

Q Did you ever make any loans to him in his personal capacity up to that time?

A No.

Q Did he have any personal financial dealings with your bank up to August 1966, only in his personal capacity?

A No, I don't recall any.

Q So, you knew Frank Mazzochi because he was associated with the Mutual Credit Union and he was also associated with some other accounts, am I correct?

A Yes.

Q And one of those accounts was the Finnog account?

A It sounds familiar.

Q And one was the Unit Home Repairs and another account was, I think, Gilbert, a co-partnership account?

MR. MARKOWITZ: D. Gilbert General Contractors.

Q (Continuing) Were you familiar in August of 1966 with the average balances in the Finnog account?

A No.

Q Were you familiar in August 1966 with the average balances in the Unit Home account?

A No.

Q Were you familiar in August 1966 with the average balances in the Gilbert account?

A No.

Q Did you in August of 1966, prior to August 4, 1966, have occasion to look at any of the bank records of the Finnog, Unit Home and Gilbert accounts, which would indicate to you what their average balances were?

A I don't recall anything.

Q Do you know if the bank made any loans to the Finnog, Unit Home Repairs or Gilbert accounts up to August 4th of 1966?

A I don't recall any.

Q Now, did you ever have an occasion to meet Frank Mazzochi off the bank premises?

A No.

Q You never socialized with him?

A No.

Q You never visited the Mutual Credit Union offices?

A No, sir.

Q You never had a cup of coffee with him off the premises?

A No, sir.

Q How about friends of his? Did you know them?

A No.

Q Did you socialize with any friends of Frank Mazzochi off the bank premises?

A No, sir.

Q So that the extent of your knowing and becoming acquainted with Frank Mazzochi up to August 4, 1966, was through his relationship with these four accounts that I have already mentioned?

A That's right.

Q Now, if you wish to embellish your knowledge as to the status of these accounts in August 1966, there are available to you at your branch various bank records, am I correct?

A That is correct.

Q For instance, which bank records?

A Well, the average balance, when the account was opened, if it's still open or whether it's closed and when

A Yes.

Q Is there some difference between United States treasury notes and United States bonds?

A Yes.

Q Do you know the difference?

A The bonds are for longer periods. The treasury notes are the short-term.

Q And have you in your capacity as a loan officer been familiar with the handling of United States treasury bonds and notes?

A In what respect, sir?

Q Do you know what they look like?

A In physical appearance, yes.

Q Have you ever been involved with them in your capacity as a bank official?

A You mean actually handled them?

Q Yes.

A No.

Q How is that?

A Well, the--

MR. HART: How is what?

Q Well, you say you have never been involved as a bank officer with the ownership or transfer of United States treasury notes.

am I correct?

A Yes.

Q Referring now to both treasury notes and treasury bonds?

A That's right.

Q Now, in functioning as a credit and loan officer, are you familiar with the appearance of a billing from a stockbrokerage house? Do you know what that looks like when securities are sold or bought?

A Confirmation and the price and so on.

Q Are you familiar with a confirmation ticket from stockbrokers or banks in connection with the purchase or sale of securities?

A I have knowledge of them.

Q Did you have such a knowledge in 1965?

A Yes.

Q Did you have such a knowledge in 1966?

A Yes.

Q Tell me: in August of 1966, did you have any conversations with Frank Mazzochi concerning treasury notes that he brought to the bank for sale by the bank?

A In August of '66?

Q Yes, in August.

A I don't remember any conversations with him in

that respect at that time.

Q Well, was an account opened at the bank in the name of Frank Mazzochi around August 8th of 1966?

A I believe so, yes.

Q Did you have something to do with the opening of that account?

A The actual physical operation of opening the account, no. One of the other men handled the routine on it.

Q You mean Mr. Zalkin?

A That's right.

Q Does your name appear on the interview sheet or on the signature card or both as having introduced Mr. Mazzochi to the bank?

A It would be on the interview sheet.

Q It would be?

A That's right.

Q Would you give us the facts and circumstances which led up to your name appearing on the interview sheet?

A Well, as I found out, the account opened with the proceeds of the sale of treasury notes, I believe around 70,000, 71,000.

MR. KOMOROFF: Would you please read the answer back to me?

responsible for the account.

Q You mean you had more dealings with the Mutual Credit Union than Mr. Kayner did in August of 1966?

A Yes.

Q You knew the account better, is that it?

A Yes.

Q Well, do you remember on the occasion when the account was opened any conversation that you had with Frank Mazzochi or anybody else at the bank premises?

A I don't recall any--I don't remember any particular conversations.

Q Did Mr. Mazzochi tell you he wanted the account opened in his name or did this come about in some other way?

A The account was opened and then I was informed about it afterwards so I had no conversation with Mazzochi about opening the account.

MR. MARKOWITZ: Who actually determines who is to get credit for the account? You said you got the credit for it. Who determines that? You?

THE WITNESS: It's pretty much agreed upon in the bank that the party, whether it be an officer or a clerk, it really doesn't matter, if they know the people and through their knowledge or their knowing each other, he opens the account, then that party

would get credit for it. It's pretty clear cut.

MR. MARKOWITZ: In the opening of the Mazzochi account, in this particular instance, who made the decision as to who would get credit for it?

THE WITNESS: Perhaps I did.

MR. MARKOWITZ: You are not certain of that?

THE WITNESS: I don't recall the exact circumstances.

MR. MARKOWITZ: Was there a conference held between you and the other officers to determine who gets credit?

THE WITNESS: No. I would expect that in this case the other men on the platform with me knew that I knew Mazzochi from the Mutual Credit Union.

MR. MARKOWITZ: Is there any special compensation involved in this credit for the opening of an account? Does the bank pay extra for that?

THE WITNESS: No, no. It goes to your prestige.

BY MR. KOMOROFF:

Q What puzzles me is why Mr. Kayner, who had already effected the sale of these treasury notes, why his name was not put on the interview sheet as the introducing officer on this account. Was there any talk involving

A That's correct.

Q Do you dispute the fact that you were the contacting officer?

A No, no.

Q Am I correct that under the printed word "description" we see the legend "proceeds of sale of treasury bonds from Merrill Lynch, $70,108.42," is on this paper?

A Yes, sir, it is.

Q Who would have written that in?

A Mr. Zalkin.

Q So that at least you knew when the account was opened that there was a credit for $70,000 on the sale of the treasury notes?

A That is correct.

Q When did you find out that on August 9th Mr. Mazzochi had signed an authorization to the bank for the sale of an additional $70,000 of treasury notes?

A I don't remember.

Q Did you ever see that paper previously, the one marked Exhibit 51-C?

A I don't remember that.

Q When did you learn that Mr. Mazzochi had brought in a second batch of $70,000 worth of treasury notes for the bank to sell?

MR. MARKOWITZ: Read it back and leave out everything after Mutual Credit account.

(The question was read as requested.)

MR. MARKOWITZ: You heard that question. Was it not an unusually large amount for a man of Mr. Mazzochi's financial position?

MR. HART: I object to the form of that question. I'm sorry.

MR. MARKOWITZ: What's wrong as to the form?

MR. HART: There has been nothing established about Mr. Mazzochi's financial status. There has been nothing at all established about Mr. Mazzochi's financial condition.

BY MR. KOMOROFF:

Q Mr. McGraw, when this account was opened up on August 8, 1966, in the name of Frank Mazzochi, Jr., did you have any knowledge whatsoever of the personal assets of Frank Mazzochi, Jr.?

A No, sir.

Q Did you have any personal knowledge at that time of the liabilities of Frank Mazzochi, Jr.?

A No, sir.

Q Did you know anything about Frank Mazzochi's ownership of any assets whatever?

A No, sir.

Q All you knew was that he had some connection with these other four accounts that were in your bank?

A That is correct.

Q As a matter of fact, I think the Unit Home account had already been closed out two months before this date. Did you know about that?

A No, I would have to refresh my memory from the records on that.

Q So, all you knew about Frank Mazzochi was that he came into the bank in connection with business on these other accounts, am I correct?

A That is correct.

Q Did you ever see a financial statement of Frank Mazzochi at any time prior to August 8, 1966?

A No, sir.

Q Did you know of any loan record which involved Frank Mazzochi personally up to August 8, 1966?

A No, sir.

Q Did you ever discuss with Frank Mazzochi's friends the personal net worth and financial standing of Frank Mazzochi, Jr.?

A No, sir.

Q Did you know what Frank Mazzochi's father did for

a living?

A No, sir.

Q Did you know anybody in Frank Mazzochi's family?

A No, sir.

Q Did you know where Frank Mazzochi lived?

A No, sir.

Q You didn't know that?

A No, sir.

Q Tell me: did you ever read Exhibit 23?

A Yes, I've read it.

Q Are your initials on that sheet?

A Yes, sir.

Q They are there, right?

A Yes.

Q When would you have put your initials on that sheet?

A A day or so after this is made up.

Q Did you discuss this account with any of the other officers whose initials are on that sheet?

A No, sir. I don't recall that, no.

Q Did you on August 8, 1966, have any knowledge as to Frank Mazzochi, Jr.'s ownership of not only government bonds or notes but any other type of securities?

A No, sir.

Q Did you on that date have any knowledge of Frank Mazzochi's transactions not only with your bank but with any other bank or stockbrokerage house which involved his ownership of securities?

A No, sir.

Q Or his sale of securities?

A No, sir.

Q Am I correct in saying that in August of 1966 Mr. Mazzochi came into the bank rather frequently after this account was opened?

A I believe so.

Q Do you know why he came into the bank in that month?

A No.

Q You don't know.

When did you for the first time learn that Mr. Mazzochi was making cash withdrawals in the sum of $10,000 or more during the month of August 1966?

A I believe at one time there I approved a check for cashing.

Q You did? Cash in what amount?

A As I recall, probably $10,000, but that's a matter of record. I would like to stand on the record on that.

MR. MARKOWITZ: Well, let's produce those

MR. KOMOROFF: That's my job. When you are doing the examining, you do it the way you see fit. I could have a thousand papers in front of me and that's really no affair of yours. I have a right to ask questions and elicit evidence in whatever way I deem it proper, be it good or bad, but that's my prerogative.

MR. HART: On the other hand, I have the right to direct the witness not to answer and I have acted upon this right.

BY MR. KOMOROFF:

Q Do you recall having any conversation at any time during the months of August or September of 1966 with Frank Mazzochi, Jr. as to the transactions that he engaged in with your bank as it pertained to treasury notes?

A I don't recall any.

Q Did you have any talks with him in September of 1966?

A Yes.

Q About what?

A About the treasury notes.

Q About the treasury notes?

A That's right.

Q Did you ever have any talks with him at any time

concerning the withdrawals that he was making and had made from the bank on the account that you had opened?

A Did I have any conversations with him regarding withdrawals?

Q Yes.

A I may have mentioned to him about large withdrawals.

Q What was his response?

A I don't recall the full discussion or any response.

Q In other words, you say that you may have had such a talk but you don't remember the substance of it?

A That is correct.

Q When did you learn for the first time that Mr. Mazzochi was making large cash withdrawals on his personal account at your bank?

A When I approved that check for $10,000.

Q That was around August 9th, right?

A Whatever date the record is.

Q When did you learn that subsequent to August 9, 1966 and during the month of August of that year that Mazzochi was making withdrawals from his said account in cash amounts of $10,000 or over several times a week?

A What was the beginning of the question?

MR. KOMOROFF: Read the question back, please.

(The pending question was read.)

A It was some time later than August.

Q It was later than August?

A Later than August.

Q I'm sorry.

A I said it was some time later than August.

Q You mean the subsequent month?

A Yes.

Q In other words, you say that between August 9th and the 31st of August 1966, you had no knowledge at all that Frank Mazzochi was coming into the bank several times a week and pulling out cash from his account in sums of $10,000 or more?

A I have no recollection.

Q Well, when did you find this out for the first time?

A I believe it was some time in September.

Q How did you find it out? What happened?

A Well, at that time I think he sold some additional bonds and I think it came to my attention at that time that he had made large withdrawals.

Q Who told it to you?

A I don't recall who told me.

Q How did it come to your attention?

A That I don't know. I don't recall that.

Q Can you fix the time when you learned this?

A Not exactly.

Q Did you approve the sale of any treasury notes that Mr. Mazzochi brought in some time in September of 1966?

A I don't recall that. I don't remember.

MR. HART: I didn't hear the last couple of words.

THE WITNESS: I don't recall that. I don't remember.

Q Would you say that you never approved the sale of treasury notes for Mr. Mazzochi?

A I don't recall any approvals.

Q What facts or circumstances led up to your knowledge in September of 1966 that Mr. Mazzochi was pulling out cash from his bank account?

A I don't recall exactly how it came to my attention except that probably in connection with the sale of bonds in September that it came to my attention then that he had made large cash withdrawals during the previous weeks.

Q Was that before you approved the sale of treasury notes for Mr. Mazzochi?

A Well, I don't recall approving any of the sale. I don't remember that.

Q Did you have any talks with Mr. Mazzochi in September of 1966 concerning either his cash withdrawals or the sale of treasury notes for him?

A Yes, in September, yes.

Q What happened?

A Well, I--

MR. HART: I'm sorry. I was getting that exhibit.

May I hear the question again, please.

(The question was read.)

Q Can you tell us what happened?

A As I recall it, I spoke to him about the large cash withdrawals and then I probably asked him about the bonds when I found out that it was a substantial amount involved and I remember asking him if they were his bonds and he said they were.

Q What happened after that?

A Well, then on the last sale, the sale of the last--

Q Wait. Did you approve the bonds? Did you approve the sale at that time by the bank of another batch of treasury notes for Mr. Mazzochi?

A Well--

MR. HART: Have we established whether these conversations were before or after the last sale in September of these treasury notes?

MR. KOMOROFF: Well, I am trying to get it from the witness.

MR. HART: Your question asks whether after his conversation he approved that last sale so implicit in your question is that that conversation took place before the last sale and I don't recall hearing the witness state that.

BY MR. KOMOROFF:

Q Well, when did that conversation take place?

A It would be around the time of the last sale.

Q I'm going to show you Exhibit 50-E and you tell me, please, if your initials appear on this instrument.

A They do.

Q What is that paper?

A This is a copy of our form of sale of securities.

Q Did you approve the sale of securities in September?

A As of this record, yes. The sale--this is the confirmation of the sale.

Q Now, you had a talk with Mr. Mazzochi about this

transaction, did you not?

A I don't recall any conversation with Mazzochi at that time.

Q Did you have a conversation with any bank employee at that time?

A Probably with the man in the loan department.

Q Who was that?

A That at that time was Santoro.

Q What was the conversation?

A I don't recall the extent of it.

Q You don't have any recollection at all?

A No.

Q Do you remember putting your initials on this instrument? Do you remember the occasion?

A No, I don't recall the actual incident of initialing it.

Q Well, does this instrument at least signify to you that you did assent to the sale by the bank of the $72,000 worth of treasury notes?

A The instrument would verify that.

Q So, we have that established.

You did okay the sale?

A That's right.

Q And then the loan department acted in further-

ance of your assent to the sale?

A That's right. They executed the sale.

Q Now, did you have any conversation with Mr. Mazzochi in September of 1966 before you approved the sale of this $72,000 worth of notes?

A I don't recall any conversation.

Q Can you give us any idea as to what you discussed with Mr. Santoro in connection with your approval of the sale by the loan department at that time?

A Well, probably I had a discussion as to the amounts, the total amounts involved in the sale, in the aggregate.

Q And just that, that's all you discussed with Mr. Santoro?

A That's my recollection. I probably discussed--

Q Did you know that Mr. Mazzochi had removed practically the full $140,000 from his account in connection with the treasury notes that were sold the preceding month?

A I recall that I learned that he had taken out those substantial amounts.

Q Well, how did you learn that? From what source?

A Well, by looking at his balance.

Q You did do that?

A I would have had to have done that to know what he had left.

Q That was done before you approved the sale of this $72,000?

A I can't recall. I can't pinpoint that.

Q But you did go to the records on the Frank Mazzochi account?

A Yes.

Q So, at the time that you approved orally of the sale of this $72,000 worth of notes, you already knew that there was practically nothing left in the Frank Mazzochi account?

A Well, I don't know. I didn't say that.

Q What did you say?

A I said that subsequently--or I believe it was my words that I looked at his balance and saw that he had taken out of the account. You had asked me, I think, if he had taken 140,000, if I knew he took out 140,000.

Q When did you get that knowledge?

A I can't pinpoint the exact date.

Q Was it after you gave your approval orally or before?

A I don't know.

Q Tell me: did the bank have a credit file on

MR. KOMOROFF: Will you have the file marked for identification?

MR. HART: You can mark it on the cover.

(Credit file of Mutual Credit Union for 1965 and 1966 marked Plaintiff's Exhibit 55 for identification, as of this date.)

BY MR. KOMOROFF:

Q Mr. McGraw, did you look at the credit file of the Mutual Credit Union at any time in 1966 and in 1965 up until August of 1966?

A I would have to look at the file to refresh my memory on that but I probably did.

Q Did you make any entries in the regular course of your performance as a loan officer in that file?

A I would have made some notations regarding the loans.

Q Please tell us what notations you made in the credit file as they involve Frank Mazzochi personally in the year 1965 and the year 1966.

A I don't recall them.

Q Would you look at the credit file then? Will that refresh your recollection?

A If I wrote anything, it would be there.

Q Please go through that file and tell us if you

tion.

Q What was your total knowledge about Frank Mazzochi personally as of January 1, 1966?

A My total knowledge of him personally?

Q Yes, as to his financial stability personally.

A I had no knowledge of his financial stability.

Q Personally?

A Personally.

Q What was your total knowledge of Frank Mazzochi on April 1, 1966,as to his personal financial stability?

A I didn't know.

Q You had no knowledge?

A No knowledge.

Q What knowledge did you have about Frank Mazzochi personally as to his financial stability on August 4, 1966?

A I didn't have any.

Q What personal knowledge did you have of Frank Mazzochi's financial stability personally on August 8, 1966?

A I had no knowledge.

Q What knowledge did you have about Frank Mazzochi's financial stability personally on September 12, 1966?

A I had no knowledge.

Q What knowledge did you have about Frank Mazzochi's financial stability personally on September 27, 1966?

Q Now, you say you have no recollection as to talks that you had with Mr. Gutstein in August, September or October of 1966 about Frank Mazzochi personally; is that correct?

MR. BLEIWAS: Note my objection to any question relating in time to any period after the transactions between Mazzochi and the bank and/or Merrill Lynch.

Q You haven't answered me, Mr. McGraw.

A No, I don't recall.

Q Did you have any talks in August, September or October of 1966 with Conrad Hoffman which involved Frank Mazzochi personally?

MR. BLEIWAS: Note my objection to the question.

You may answer it.

MR. HART: Yes, you may answer it.

A Yes.

Q Can you tell us what the talks were?

A Regarding--

MR. BLEIWAS: Note my objection to the question and the answer.

A As I recall, it was in connection with the large withdrawals, that possibly it was a violation of the

Federal Reserve regulations.

Q You had a talk with Mr. Hoffman?

A That's my recollection.

Q When was that?

A I can't pinpoint a date.

Q What was the nature of the talk?

A Well, whether or not there was a violation of the Federal Reserve regulations to have substantial cash withdrawals.

Q Where was this talk?

A In the bank.

Q Was it one talk or a series of talks?

A I don't recall that.

Q Well, do you remember the substance of your conversation?

A The substance was: is it or was it or is it a violation of the Federal Reserve regulations.

Q Did you ask the question or did Mr. Hoffman ask the question?

A I think I did.

Q What was the response?

A As I remember, he wasn't sure. He had to check into it.

Q He said he was going to check into it?

A I believe that's the response.

Q Was that the only talk you had that month with Mr. Hoffman about Mr. Mazzochi?

A I recall that. Now, whether there were others, I don't recall. There may have been.

Q Well, at the time that you had spoken with Mr. Hoffman, you already knew that $140,000 had been removed by Mr. Mazzochi from his personal account, did you not?

A This is in September or October, I think you--

Q September, yes.

A I think you mentioned October, did you not?

Q Will you look at Exhibit SS attached to the responses to our interrogatories and see if that refreshes your recollection as to when you had a talk with Mr. Hoffman?

I am looking at Exhibit 46. There's a memo that you sent to Mr. Walter. Do you remember dictating this memorandum, Mr. McGraw?

A Yes, I dictated it.

Q And was that after you had the talk with Mr. Hoffman?

A I think so.

Q Well, was Mr. Hoffman a superior officer to you?

A No, sir.

Q Was that the first talk that you had with Mr. Hoffman about the withdrawals by Mr. Mazzochi?

A I think so, yes.

Q Did you have any talks with Mr. Ludlow or Mr. Maffeo about the fact that Mr. Mazzochi had withdrawn $140,000 in cash?

A I don't recall any conversations, discussions with either of those men.

Q Did you have any talk with Mr. Kayner about that prior to the time that Mr. Kayner was transferred from your branch?

A I don't remember.

Q Can you state the facts and circumstances involving Mr. Kayner and his transfer from this branch to another branch of the bank?

MR. BLEIWAS: I would like the record to be clear that I take a continuing objection on behalf of the defendant, Merrill Lynch, to any question that has anything to do with the period of time following the sale of the treasury notes involved in this lawsuit on the ground that such testimony is irrelevant, immaterial and incompetent, not binding upon this defendant in any way and I further object on the ground that such testimony and such question is not calculated to dis-

A Mr. Hoffman sat in a different area of the bank.

You may recall, our bank is L-shaped. He sits out towards the 149th Street entrance.

Q Well, don't the loan officers sit in one area?

A That's correct.

Q Wasn't Mr. Hoffman a loan officer at that time?

A No, sir. He was the chief operating officer.

Q I see. He sat in the front part of the bank with Mr. Dellatte?

A That's right.

Q But you sat close to Mr. Ludlow and Mr. Kayner and Mr. Maffeo, am I correct?

A That's right.

Q Did you have any talk with Mr. Kayner about the withdrawal of the $140,000 before Mr. Kayner was transferred?

A I recall having some conversations with him.

Q Can you give us the substance of the conversations?

A I can't recall the substance.

Q Did you have any talks with Howard Ludlow about Mr. Mazzochi's withdrawal of the $140,000 in August of 1966?

A I don't recall talking to Howard Ludlow about it.

Q Did you have any talks with Antonio Maffeo about Mr. Mazzochi's withdrawal in August 1966, of the $140,000 in cash?

A I don't recall speaking to Anthony.

Q Did you have any talks with Rose Moscatello in August of 1966 concerning Mr. Mazocchi's withdrawal of the $140,000 in cash?

A I don't recall any conversation with Miss Moscatello.

MR. MARKOWITZ: Did she come to you with the check for $10,000 and ask you to okay it?

THE WITNESS: I don't recall that she did. It would be very unusual. The tellers generally don't leave their cages--their windows, rather.

Q Well, did you have any talk with her at all or anybody else in the cages there concerning the fact that Mr. Mazzochi was withdrawing these large amounts from his personal account?

A I don't recall talking to them about it.

Q Did you have any talk with Mr. Santoro in August or September 1966, concerning Mr. Mazzochi's withdrawal of the $140,000 in cash?

A I don't recall talking to Santoro about that.

Q Did you have any talk in the month of August 1966 and also in September 1966 with Mr. Landberg concerning Mr. Mazzochi's withdrawal of the $140,000 in cash?

A I don't recall talking to Mr. Landberg at all

about it.

Q How about Mr. Stolz? Did you have any such talks with him?

A Mr. Irving Stolz?

Q Yes, during that three-month period concerning the withdrawals by Mr. Mazzochi of $140,000.

A I believe that would be in September that I spoke to Mr. Stolz.

Q Please tell us what you said to him and what he said to you.

A I gave him the information that we had, the extent of the withdrawals and the sale of the bonds and I believe I wrote a memorandum or Mr. Walter gave Mr. Stolz a memorandum. I have forgotten at the moment which or whether it was both.

Q Well, did you have a direct contact with Mr. Stolz during that three-month period either by phone or in person or by writings concerning the subject matter of this lawsuit?

A It was definitely on the phone.

Q Directly between you and Mr. Stolz?

A That's correct.

Q Did you call him or did he call you?

A I called him, as I remember.

Q At his office?

A At his office.

Q Was this just one conversation?

A I don't remember how many. There was probably more than one.

Q Can you tell us the subject matter of your talks with Mr. Stolz?

A Well, I was asking his advice as to what to do.

Q What did you tell him?

A I told him about the sale of the bonds and the large withdrawals of cash.

Q What did he say?

A I don't recall what his answer was, except that he would look into it and advise me.

Q About what?

A Just what to do. We had held some money there, whether to release it or to retain it.

Q And did Mr. Stolz know that Mr. Mazzochi had pulled out $140,000 in cash at the time that you had this conversation with him?

A I don't recall the exact words or amounts quoted to him. I would expect that I gave him the details as we knew them.

Q Did your talks with Mr. Stolz come off around the

period of September 15, 1966?

A I don't recall the exact date but it would be around that time.

Q What was Mr. Stolz' response to you?

A As I recall it, it was to release the cash.

Q Who told you to release the cash?

A That's right.

Q Did he tell you he was satisfied that Mr. Mazzochi had good title to these different treasury notes that he had brought in to you for sale?

A I don't recall all the details of the conversation.

Q Was that one of the topics that you discussed?

A I don't recall that.

Q Did he ask you if Mr. Mazzochi had produced to you papers showing the source of his ownership?

A I don't recall that he did.

Q Do you remember if he asked you if Mr. Mazzochi had produced a bill of sale or a billing or a confirmation ticket from a stockbrokerage house or bank?

A I don't recall that.

Q Did you ask Mr. Mazzochi at any time for this type of instrument showing his ownership or his right to possess these bonds before you gave the approval to Santoro to sell the $72,000 worth of treasury notes?

A No.

Q What did you ask Mr. Mazzochi to produce to show his right to the proceeds on this $72,000 worth of notes?

A An affidavit that the bonds were his.

Q Well, were you familiar with a confirmation ticket at the time that you asked Mr. Mazzochi for the affidavit?

A Confirmation ticket of what?

Q Well, showing a purchase or sale of securities.

A Our forms?

Q Any kind of a form.

A Was I familiar with a confirmation?

Q Yes, in September of 1966, when you were dealing with Mr. Mazzochi.

A Yes, I knew about confirmations.

Q You were familiar with them?

A Yes.

Q Did you ask Mr. Mazzochi to produce a bill of sale in his favor or in the favor of someone in his family--

A No, no.

Q (continuing) --which entitled him to sell these securities?

A No, sir.

Q You just asked him to produce an affidavit of

title?

A That's correct.

Q Do you know what a bill of sale is?

A Bill of sale, yes. It's a transfer of assets of some nature.

Q Did the affidavit indicate to you that it was an instrument showing a transfer of title from somebody to Mr. Mazzochi for the $72,000 of treasury notes that he brought to the bank for sale?

A As I recall it, it was his affidavit that he was the owner of the bonds.

Q Well, did that indicate that he had received the bonds or treasury notes for value from somebody else?

A Not that I recall.

Q Didn't you think that it was necessary for him to justify his claim to ownership by producing for you an instrument which would indicate the source of his title?

A No.

Q Didn't you think about it at all?

A No, sir.

MR. BLEIWAS: Objection to the form of the question. He testified he didn't think it was necessary, not that he didn't think of it at all. I think your question is objectionable.

Q Mr. McGraw, in September of 1966, did you ask Mr. Mazzochi to produce a bill of sale which would show that he was entitled to possession of these $72,000 worth of United States treasury notes?

A No.

Q In September of 1966, did you ask Mr. Mazzochi to produce a billing from a stockbrokerage house or from a bank or a confirmation of purchase by him or by someone else which would indicate that he had the right to bring these $72,000 in treasury notes into your bank?

A No.

Q Did you ask in September 1966, that Mr. Mazzochi produce any kind of paper or instrument which would indicate that he was properly entitled to the possession of any part or all of the $72,000 in treasury notes that he brought into the bank on September 12, 1966 for sale?

A No, sir.

Q Now, looking at Exhibit 50-E, which is your approval--

MR. HART: Excuse me just a moment. I want to make sure the witness answers the questions accurately.

May I hear the last question, please.

(The requested portion of the record was

BY MR. KOMOROFF:

Q You want to make a correction?

A Yes, I would like to.

Q Based upon the statement that Mr. Hart made on the record?

A Based upon refreshing my memory on the affidavit that Mr. Mazzochi signed.

Q Is that an affidavit of title?

A An affidavit--

Q Does that show that Mr. Mazzochi purchased these notes from somebody?

A No.

Q What is shown in that affidavit?

MR. HART: Let the witness answer the question.

MR. KOMOROFF: I'm asking questions here.

MR. HART: Let him answer them.

Q Do you feel I'm not giving you an opportunity to answer the questions?

A I'm trying to do my best.

Q I know you are, Mr. McGraw, and by the same token, so am I.

Now, you are referring to Exhibit QQ attached to the responses to our interrogatories; is that correct?

A That is correct.

Q Is that the paper to which Mr. Hart referred you to a few minutes ago?

A Yes, sir.

MR. KOMOROFF: Where is the original of that?

MR. HART: We have it and we will produce it.

Q What is that paper, Mr. McGraw?

A That's an affidavit of Mr. Frank Mazzochi, Jr. that he is the owner of the bonds that are solicited there.

Q Who prepared that affidavit?

A I don't recall at the moment.

Q Did Mr. Mazzochi bring this in?

A I don't remember that. I think it was prepared by the bank.

Q Did you supervise the preparation of that affidavit?

A I don't recall that.

Q Do you remember detailing that responsibility to somebody else, some other bank employee?

A No, I don't.

MR. KOMOROFF: Let's have this marked for identification.

(Original of affidavit of Frank Mazzochi, consisting of two pages,

marked Plaintiff's Exhibit 56 for identification, as of this date.)

BY MR. KOMOROFF:

Q Did you see Mr. Mazzochi sign this affidavit before a Notary Public?

A Yes.

Q And Mr. Fehling, the Notary Public, is he in your bank?

A He has since retired from the bank.

Q But he was an employee of the bank on September 20, 1966?

A That is correct.

Q Can you tell us whether or not you prepared this affidavit or whether Mr. Mazzochi had this affidavit prepared and brought it in with him?

A I don't recall how it happened.

Q Well, the information on the affidavit came from papers in the possession of the bank, isn't that so?

A I don't know. We would have that information.

Q You have the information?

A Yes, we would have all that information.

Q What facts and circumstances led up to the preparation of this affidavit?

A The question of the substantial amount involved

and the substantial--and the immediate or almost immediate withdrawal of the proceeds from the sales.

Q You mean on the notes that were sold earlier?

A That's correct, sir.

Q On the notes that were sold in August; is that right?

A On all of the--the sale on all of the notes.

Q Well, have you told me or have you recited all of the facts and circumstances underlying the need for Mr. Mazzochi to sign this affidavit?

A Well, to the best of my knowledge, I related it to you.

Q Who prepared this affidavit?

A I can't answer you at the moment.

Q When did you see it for the first time?

A I would say it's the date that it's signed.

Q Did you have a talk with Mr. Mazzochi before he signed this affidavit?

A Very brief.

Q What was the conversation?

A I believe I asked him to sign the affidavit and he said he would and he did and that was it.

Q Didn't you ask him if he would sign an affidavit before the date that he signed it?

A Maybe a day before.

Q The day before?

A Well, it would be--

Q Who was present at the time you had this conversation with him?

A I don't recall.

Q Did he sign it at your desk or Mr. Fehling's desk?

A I don't recall the exact location of taking his signature.

Q Didn't you personally have something to do with the preparation of this affidavit?

A I don't recall that I did.

Q Do you know who did?

A No, not offhand.

MR. MARKOWITZ: Did you have this affidavit or did you request Mr. Mazzochi to make an affidavit of your own volition or did you first talk to somebody in the bank?

THE WITNESS: That was, I believe, at the direction of the people in the bank, superior officers.

MR. MARKOWITZ: Who?

THE WITNESS: I think it was a man named Orens, Harry Orens.

MR. MARKOWITZ: What is his position in the

bank?

THE WITNESS: He was the vice president.

MR. MARKOWITZ: What did you tell him about this transaction that caused him to instruct you to secure an affidavit?

THE WITNESS: Well, I told him the whole story, the amounts involved and the large withdrawals.

MR. MARKOWITZ: And what was his statement to you?

THE WITNESS: As I recall it, he wanted to get an affidavit that he so owned the bonds--or notes, rather.

MR. MARKOWITZ: Did you talk to Mr. Stolz in addition?

THE WITNESS: And I also spoke to Mr. Stolz, too.

MR. MARKOWITZ: About the same time?

THE WITNESS: Yes, it would be the same time.

MR. MARKOWITZ: And he suggested that an affidavit be obtained from Mr. Mazzochi?

THE WITNESS: I believe he did.

MR. MARKOWITZ: Did he also suggest that you make other inquiries about these notes?

THE WITNESS: I don't recall that it went

beyond the affidavit.

MR. MARKOWITZ: At that time were you concerned as to whether Mr. Mazzochi was the owner of these treasury notes?

THE WITNESS: No, it was a measure of--we wanted to have something in the file to back up the large cash withdrawals to be tied in.

MR. MARKOWITZ: Are you finished with your answer?

THE WITNESS: Yes.

MR. MARKOWITZ: Well, how long prior to the date of this affidavit did you become curious as to the amount of the transactions?

THE WITNESS: I don't know exactly. The time element would be very close.

MR. MARKOWITZ: Well, the affidavit is dated September 20th and Exhibit 46 is dated September 15th, your memorandum to Mr. Peter Walter.

Will you tell us how long prior to September 15th that you had become curious about the size of the transaction?

THE WITNESS: I would say it's that time, the memo.

MR. MARKOWITZ: Is it usual procedure for

you or the bank to secure affidavits from people who come in and request that bonds or notes be sold by the bank for their account?

THE WITNESS: No.

MR. MARKOWITZ: You have never done that before?

THE WITNESS: No.

MR. MARKOWITZ: Who in the bank first called your attention to the amount and size of these transactions?

THE WITNESS: I don't recall.

MR. MARKOWITZ: Was it Mr. Kayner?

THE WITNESS: I really don't recall at all.

MR. MARKOWITZ: Was it Mr. Gutstein?

THE WITNESS: I don't remember that.

MR. MARKOWITZ: Now, you said something about wanting to have something in the file about these treasury notes.

What file are you referring to?

THE WITNESS: Well, our general files in the bank.

MR. MARKOWITZ: Is there anything else in that file aside from this affidavit that is now marked Exhibit 56 concerning these treasury notes?

THE WITNESS: I would say no.

MR. MARKOWITZ: Did Mr. Stolz say to you in the course of his conversation with you that you should make additional inquiry concerning the true ownership of these notes?

THE WITNESS: Additional--I think at this time inquiry had been made about the notes.

MR. MARKOWITZ: By whom?

THE WITNESS: I believe by our main office.

MR. MARKOWITZ: And who in the main office did that?

THE WITNESS: I think Mr. Walter.

MR. MARKOWITZ: Did you yourself make any inquiry other than securing this affidavit as to who was the true owner of these notes?

THE WITNESS: No, sir.

BY MR. KOMOROFF:

Q Did any bank officer or employee or Mr. Stolz suggest to you before the proceeds were released at the end of September 1966, to Mr. Mazzochi on the $72,000 transaction, that you should ask Mr. Mazzochi to produce a billing in favor of Frank Mazzochi or a confirmation of purchase of any part of the $72,000 in treasury notes by Frank Mazzochi or any other instrument that would show the

source of his title to any part of the $72,000 in treasury notes?

A No, sir.

Q Were you guided then in the release of these proceeds at the end of September 1966, by what you had heard from the main office?

A I didn't follow the question.

Q Well, were you guided in releasing the $72,000 to Mr. Mazzochi by instructions from your main office?

A That is right.

Q By instructions from your attorney?

A The advice of the attorneys.

MR. MARKOWITZ: By the way, we haven't established yet who ordered the proceeds of this last batch of treasury notes held in suspense.

THE WITNESS: I did.

MR. MARKOWITZ: When did you make that decision?

THE WITNESS: To my recollection, it would be the day that the money came into the bank.

MR. MARKOWITZ: What facts and circumstances prompted you to make that decision?

THE WITNESS: Well, if there was anything wrong, I felt that the bank was protected in holding

the money until it could be clarified.

MR. MARKOWITZ: Hold the money in what?

THE WITNESS: The bank in holding the money.

MR. MARKOWITZ: Read his answer, please.

(The requested portion of the record was read.)

MR. MARKOWITZ: When to your mind was this matter clarified so that the moneys could be released?

THE WITNESS: On the receipt of the affidavit.

MR. MARKOWITZ: That was sufficient?

THE WITNESS: That was sufficient for me.

BY MR. KOMOROFF:

Q Well, actually the moneys were not released until about nine days after the date on the affidavit, isn't that so?

A I don't know. I have to look on the record for that.

Q Well, look at the date on the affidavit. Isn't that September 20th?

A That is right.

Q And when did you put through the order at your branch bank that the moneys could be released to Frank Mazzochi?

A I don't remember the exact date.

Q Well, how much after you received the affidavit?

A Well, that I can't guess at.

Q Can you tell us?

A Not exactly, no. I can't.

Q Mr. McGraw, will you look at Exhibit S, please.

Does that indicate that a credit memo was issued by you on September 29th, so that the $72,000 could be released?

MR. HART: Rather than refer to exhibits to the answers to interrogatories, a photostatic copy has been marked as Plaintiff's Exhibit 2. That's a copy of Frank Mazzochi's bank statement as of September 30, 1966, and I think since that's already been marked as an exhibit in these depositions, we ought to refer to that one.

Q All right, Mr. McGraw, does Exhibit 2 refresh your recollection as to when you issued a credit memo so that Mr. Mazzochi could obtain the proceeds on the sale of the $72,000 in treasury notes?

A September 29th there was a credit memo of $71,698.70.

MR. BLEIWAS: May I ask just one question on voir dire here so I understand how this witness answers your questions?

A I believe Mr.--a cashier, Mr. P. Walter.

Q Were you in contact with Mr. Walter between September 20th and September 29th on this question?

A I may have been. I don't recall exactly.

Q Do you remember any talks that you had had with Mr. Walter about this?

A No, I don't recall any.

Q Are there any memoranda that you made or any entries and bank records that you made concerning talks you had with Mr. Walter?

A No, sir.

Q Do you have any recollection at all as to the talks that you had with Mr. Walter orally between September 15th and September 29, 1966, concerning this matter?

A Only to the extent that they were checking the records to see if they were missing, notes or bonds.

Q Was anything else discussed?

A I don't recall that there was anything else.

Q Are there any records that you can go to that would embellish your recollection as to what was discussed by you and Mr. Walter concerning this case between September 15th and 29th of 1966?

A No, sir.

Q And you have no better recollection then?

MR. MARKOWITZ: And both you and Mr. Hoffman relied on what Mr. Walter had told you about his checking at the Federal Reserve Bank?

THE WITNESS: That is correct.

MR. MARKOWITZ: On the basis of that reliance you proceeded to issue the credit memo of September 29, 1966; is that right?

THE WITNESS: That's the way it finalized, yes.

BY MR. KOMOROFF:

Q Tell me: in all these talks that you had with Mr. Mazzochi in September, after September 12, 1966 up until September 29, 1966, did you ask Mr. Mazzochi to explain to you what he had done with the $140,000 in cash that he had received in August 1966?

A No.

Q Did you ask Mr. Mazzochi during this identical period whether he had gotten the money to obtain possession of the $212,000 in treasury notes or any part thereof?

A No, sir.

Q Were these questions suggested to you by any of your brother officers in connection with this case?

A What questions, sir?

Q The questions of asking Mr. Mazzochi where he had

gotten the money to buy any part or all of the $212,000 in treasury notes.

A Had my fellow officers suggested it to me?

Q Yes.

A No.

Q Did any of your fellow officers or even any downtown suggest to you that you should inquire from Mr. Mazzochi what he had done with the $140,000?

A No, sir.

Q Or what he was going to do with the balance of $72,000 that was in the suspense account at the bank?

A No, sir.

Q Didn't it occur to you that it was necessary to go to the source of title?

MR. BLEIWAS: I object to the form of that question.

MR. MARKOWITZ: He hasn't finished it yet, Mr. Bleiwas.

MR. BLEIWAS: He stopped. What do you want me to do?

MR. HART: Have you finished the question?

MR. BLEIWAS: He is stating a fact not in evidence and a fact that has not been established by any rule of law or any judicial determination.

THE WITNESS: Yes, sir.

MR. MARKOWITZ: And up to that time you had received this affidavit, which is marked Exhibit 56, you had been informed by Mr. Walter that he had made a certain inquiry at the Federal Reserve Bank--

MR. BLEIWAS: There is no sense in reiterating all this testimony that has taken an hour to get on the record. Mr. Markowitz, you are going to leave out a point and you are going to ask a question that doesn't cover many, many questions and on that basis, I object to it.

This record speaks for itself. He's testified here for a half hour leading up to this point when he released the funds from the suspense account. You have no right and it's an unfair question to go into one thing at a time now. There has been too much covered.

MR. MARKOWITZ: Was it your decision alone that resulted in the release of the funds of $71,698.70?

THE WITNESS: No.

MR. MARKOWITZ: Whose decision was it?

THE WITNESS: Well, I would say on the directives I got from the main office, from Mr. Walter

and the advice of Mr. Stolz.

MR. MARKOWITZ: The directive from the main office was from whom?

THE WITNESS: Mr. Walter.

MR. MARKOWITZ: That was not a directive from the main office. It was Mr. Walter's advice to you.

MR. BLEIWAS: Mr. Walter is at the main office.

THE WITNESS: He is the assistant cashier of the bank and he resides at the main office.

MR. HART: The cashier.

THE WITNESS: He's the cashier.

MR. MARKOWITZ: Was there a directive from the main office aside from Mr. Walter who told you?

THE WITNESS: I don't recall.

MR. MARKOWITZ: There was none?

THE WITNESS: There may not have been. I don't recall any.

MR. MARKOWITZ: What had Mr. Stolz told you?

THE WITNESS: That we have to release the money, that it belongs to Mr. Mazzochi.

MR. MARKOWITZ: Did you discuss this with anybody else before you released this money, aside

MR. BLEIWAS: Mr. Markowitz, let's get an identification of the exhibit.

MR. MARKOWITZ: He's already identified it.

THE WITNESS: I would like to correct my answer, if I may.

MR. MARKOWITZ: Off the record.

(Discussion off the record.)

MR. MARKOWITZ: On the record.

THE WITNESS: If I may correct my answer, my letter of September 21, 1966, addressed to Mr. Irving Stolz of Levy, Murphy & Stolz, 99 Park Avenue, New York, New York 10009:

"Dear Mr. Stolz:

"We are enclosing an affidavit of ownership of United States Government securities signed by Mr. Frank Mazzochi. This is in reference to our telephone conversation of Monday, September 19, 1966, regarding the sale of these securities and the withdrawal of the funds. Will you please advise the writer. Very truly yours, Edward I. McGraw, Assistant Vice President."

BY MR. KOMOROFF:

Q And you forwarded this affidavit to Mr. Stolz with that letter?

A That's correct.

MR. BLEIWAS: Would you read into the record any response that you might have received?

MR. MARKOWITZ: The exhibit will speak for itself.

MR. BLEIWAS: He's read one part. Let him read the other part.

MR. MARKOWITZ: Mr. McGraw, there is some written notation in the upper right-hand part of that letter. Is that your handwriting?

THE WITNESS: No, sir.

MR. MARKOWITZ: Would you recognize the handwriting?

THE WITNESS: No, I don't.

MR. HART: Let me state for the record that in view of the fact that I have produced the original of that letter and the original of the affidavit, that I personally obtained those from Mr. Stolz directly and they were in his file at the outset of this litigation.

MR. MARKOWITZ: So that you relied in addition upon the memorandum of Mr. Stolz at the foot of this letter in releasing the funds?

THE WITNESS: That is correct.

owner of the treasury notes listed on this affidavit because the affidavit contains the words: "I am the rightful owner of the United States treasury notes sold by the Royal National Bank"?

MR. HART: I object to the form of that question, the expression "did you take Mr. Mazzochi's word." I don't know what that means and I don't know what it has to do with what we are talking about, so would you rephrase that.

MR. BLEIWAS: I would also like to note an objection to that question on the grounds that this witness has been testifying for approximately 40 minutes by my watch concerning all the investigations and circumstances leading up to the release of the funds realized from the sale of the treasury notes and I think the question is patently improper.

BY MR. KOMOROFF:

Q Mr. McGraw, after you received this affidavit, did you ask Mr. Mazzochi for any documents or instruments that would support the statement in this affidavit, "I am the rightful owner of the United States treasury notes sold by the Royal National Bank"?

A No.

Q Did it occur to you that such documents were

necessary to establish ownership of Mr. Frank Mazzochi or people for whom he was acting in the sale of these treasury notes?

MR. HART: I object to the form of that question.

MR. MARKOWITZ: Well, did you ask him to substantiate in any other way that he was the rightful owner of these treasury notes?

THE WITNESS: No, sir.

BY MR. KOMOROFF:

Q Did he tell you he was the rightful owner of the treasury notes?

A Yes, sir.

Q When?

A At the time of the affidavit and he said they were his notes.

Q Well, did he tell you that they were his notes when he brought the notes in to the bank the first time?

MR. HART: Would you fix a date?

Q When he brought them in for sale, that would be September 12th.

A I don't recall that anybody asked the question at that time.

Q What knowledge did you have as to the rightful

ownership of Mr. Mazzochi of the $72,000 of United States treasury notes at the time that you gave the oral authorization to Mr. Santoro to sell those notes?

A He was the possessor of them. They are negotiable securities. They were in his possession.

Q Was that your total knowledge?

A That is right.

Q Were you satisfied and was it sufficient for you to give such an okay because Mr. Mazzochi had possession of these notes?

A That's correct.

Q You didn't think it was necessary to check further?

A No, sir.

MR. MARKOWITZ: I refer you to page 187 of the minutes of your testimony at the criminal trial, Mr. McGraw.

Were you asked this question and did you make this answer:

"Q Did you ever make inquiry of Mr. Mazzochi where he obtained the bonds?

"A I believe I could have asked that question."

Did you make that answer to that question?

THE WITNESS: If it's on the record, I would say I did.

MR. MARKOWITZ: And what response did you receive from Mr. Mazzochi to that question?

MR. BLEIWAS: I object to the form of the question.

MR. HART: Just a moment now. Let me read for the record the next question and next answer and this follows immediately on the question you just read:

"Q Don't say what you could have, only whether you did or not, sir.

"Is it the best of your recollection?

"A I don't recall asking him specifically where he got the bonds."

MR. MARKOWITZ: So you never asked, Mr. McGraw, where he got the bonds?

MR. HART: I object to the form of that question and I resent the form of that question.

MR. MARKOWITZ: Please, Mr. Hart. I'm going to ask you now whether the question: "Did you ever make inquiry of Mr. Mazzochi where he obtained the bonds," and your answer, "I believe I could have asked that question," whether or not you did ask that ques-

tion.

THE WITNESS: I did not.

BY MR. KOMOROFF:

Q Mr. McGraw, I'm look at page 179 of your minutes and I ask you if this question was asked of you and if you made the answer:

"Q I see. Did you speak to him personally?

"A Yes, I did."

A Yes, sir.

Q The next question was:

"Q Was there anybody else present that you recall?"

The answer is:

"No."

Did you make that answer?

A Yes, sir.

Q The next question is:

"Was he by himself?

"A Yes."

Is that correct?

A Yes, sir.

Q Now, did you make this answer to this question:

"Q All right. Will you tell us as best you can recall what your conversation was with Mr.

Mazzochi?

"A Well, I told him that a transaction of this size was quite unusual and then I asked him if they were his bonds and he said yes."

Now, is that a correct representation of the question and your answer thereto?

A Yes, sir.

Q "Q Was that the extent or did you have any further conversation?

"A Then I asked him if he would give me an affidavit to that effect."

Was that the question asked of you and did you make that answer?

A Yes, sir.

Q And the next question is:

"What did he say?

"A Yes, he did give us an affidavit."

Was that a correct answer to the question you were asked?

A Yes, sir.

Q You didn't ask Mr. Mazzochi for any other instruments which would show ownership by him or the right for him to possess any part of the $72,000 in treasury notes?

A No, sir.

Q Would Exhibit 46 give you an idea as to when those talks ensued between you and Mr. Walter?

A Yes, it would.

Q What facts and circumstances led to your contacting Mr. Walter?

A I think the fact that the case was being drawn out. I think that's what stimulated it.

Q Well, the cash had already been drawn out, hadn't it?

A Yes, quite a bit of it.

Q Well, how much of the $140,000 remained in the account on September 15th of 1966?

A According to my memo here, a total of $140,192.12 was drawn by checks cashed on us.

Q So the whole amount had been taken out?

A That's right.

Q Am I right on that?

A Yes. I mean, going from this memo.

MR. HART: We have marked the bank statements and I think the bank statements will speak for themselves as to what the balance was in the account on any particular day.

MR. MARKOWITZ: He already said how much there was so let's not--

account? Do you see a withdrawal?

A On September 23rd.

Q Of 1966?

MR. HART: What happened on September 23rd?

THE WITNESS: There is a check for $1,687 that was paid.

MR. HART: Did that leave a balance in the account?

THE WITNESS: $5.12.

BY MR. KOMOROFF:

Q So that by the time that Mr. Mazzochi was credited on the September 12th sale of the treasury notes, he merely had this $5 balance in the account?

A That is correct.

Q Now, can you tell us the conversations that you had with Mr. Walter concerning this situation in September of 1966?

A No, I can't recall the substance of the conversation.

Q You don't have any idea?

A No recollection of it.

Q All you know is that you spoke with him?

A That's right.

Q About how many times?

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Mr. Walter?

A No, sir.

Q Did he come up to the branch office to discuss this matter with you?

A I don't recall that he did.

Q It was just on the telephone between the two of you?

A That's my recollection.

Q Tell me: did you have any talks with Mr. Zalkin in August, September or October of 1966 concerning the cash withdrawals by Mr. Mazzochi or concerning the sale around September 12th of the $72,000 in notes?

A I don't recall any discussions.

Q On the criminal trial, and I'm referring to page 174, was this question asked of you by Mr. Rotker, the Assistant District Attorney, and did you make the answer that I will now read in the record?

"Q Do you recall what the circumstances were that prompted you to have a conversation or more than one conversation with Mr. Mazzochi?

"A Yes. My curiosity as to the amount of the transactions."

Did you make that answer to that question?

A Yes, sir.

MR. BLEIWAS: What page is this?

MR. MARKOWITZ: 174.

BY MR. KOMOROFF:

Q I'm now going to page 192. I am reading from page 192, the last two lines:

"THE COURT: What did you say to him and what he say to you?

"THE WITNESS: I asked him if they were his bonds and he said yes."

Was that a question asked you by Judge Murphy at the trial and did you make that answer?

A Yes, sir.

MR. HART: Mr. Komoroff, excuse me.

In order to avoid the necessity of reading a lot of other questions and answers into the record, will you stipulate that the conversation referred to in the question and answer that you just read took place some time prior to September 20, 1966 in Mr. McGraw's office?

MR. KOMOROFF: Yes, I will stipulate to that.

MR. HART: As reflected by the prior questions and answers in this transcript.

MR. KOMOROFF: Yes.

"Tell us, as far as you can recollect, what took place in this five or ten-minute period of time.

"A That was an unusually large transaction."

Did you make that response to that question?

A Yes, sir.

Q Now, page 194, about the seventh line:

"Q All right, tell us what you said to him and what he said to you.

"A I said that it's an unusual transaction and would he give me an affidavit to the effect that they were his bonds."

Did you make that answer?

A Yes, sir.

Q To that question?

A Yes, sir.

Q Now, page 196, about the fifth line:

"Q Now, do you know, Mr. McGraw, whether the proceeds of this sale, $71,698 was credited to his checking account on that day?

"A I would expect so from the proceeds. That would be in the normal course."

Is that an answer you made to that question?

A Yes, sir.

Q "Q Right. But isn't it a fact that the pro-

ceeds of this were not credited until September 29th, some 17 days later?

"A I would have to look at the statement."

Did you make that answer?

A Yes, sir.

Q "Q Well, let me show you this, Defendants' Exhibit F in evidence.

"A Yes, what this was, it may have been credited to his account originally and then taken out.'

Did you make that answer?

A Yes, sir.

Q "Q Pardon?

"A This may have been credited to his account originally and subsequently taken out or it may have gone right into a suspense account. There was money which was not availsble moneys which were held on our books pending a disposition."

Is that an answer that you made?

A Yes, sir.

Q "Q Pending what disposition?

And the answer is:

"Whether we should pay the money out or not.'

Is that an answer that you made?

A Yes, sir.

Q Now, was it your order to put the proceeds into the suspense account?

A Yes, sir.

Q That was within your jurisdiction?

A Yes, sir.

Q And you were prompted to do this because of the unusual nature of this transaction?

A That's right.

Q Now, Mr. McGraw I show you Exhibits F--these are attached to the responses to the interrogatories--H, J and L and will you gentlemen produce these, please?

MR. HART: The documents that you just referred to have been marked, each of them has been marked twice in this deposition. The first one is marked Plaintiff's Exhibit 52-A--

MR. KOMOROFF: Wait a minute. Is that the one that's F?

MR. MARKOWITZ: Yes.

MR. KOMOROFF: Go ahead.

MR. HART: 52-A and it's also been marked Defendant Merrill Lynch's Exhibit A.

MR. KOMOROFF: How about H?

MR. HART: The next document has been marked twice as Plaintiff's Exhibit 52-B and Defendant

question. That calls for a legal conclusion.

MR. BLEIWAS: Same objection.

BY MR. KOMOROFF:

Q What are these confirmation tickets? As a bank man, will you please tell us what they are?

MR. BLEIWAS: Objection. They are not this witness' tickets.

Q Are these bank records?

MR. MARKOWITZ: Let him answer the first question.

Would you read it back, please.

(The request portion of the record was read.)

MR. BLEIWAS: I object to the question on the ground that this witness has not been established, even as a bank man, as an expert in this type of document.

Q Do you know what those papers are?

A I know that these are confirmations sent to us by Merrill Lynch, Pierce, Fenner & Smith, Incorporated confirming that they had purchased from us these treasury notes.

Shall I describe them in detail?

Q Well, you don't have to describe them in detail,

but do these four exhibits refer to the treasury notes that Mr. Mazzochi brought into the bank for sale?

A I would assume so.

MR. HART: Do you know? Don't make any assumptions at this point.

THE WITNESS: I'm sorry.

Q What do the papers indicate?

MR. BLEIWAS: I object to the question. The papers will speak for themselves.

A What do the papers say?

Q Yes.

A Merrill Lynch bought these treasury notes from us. It describes the notes.

Q Have you ever in your functioning as a bank officer had occasion to, from time to time, look at confirmation tickets from stockbrokerage houses?

A Very rarely.

Q Well, have you done so in the past?

A I have on occasion, yes.

Q You have on occasion?

A Yes.

Q In other words, as of August, September 1966, you had familiarity with what a confirmation ticket from a stockbrokerage house looks like?

A Yes.

Q What it signifies, what it means?

A Yes.

Q You didn't ask Mr. Mazzochi to produce for you any confirmation tickets to show his ownership, did you?

A No, sir.

Q Of the treasury notes that he presented?

A No, sir.

MR. MARKOWITZ: On none of the occasions, four separate occasions when he brought in treasury notes to be sold by the bank?

THE WITNESS: No, sir.

Q Did any of your brother officers suggest to you that Mr. Mazzochi should bring in the confirmation tickets to show his right to possession of the treasury notes?

A No, sir.

MR. BLEIWAS: Note my objection to this line of questioning as to whether the witness asked for confirmation tickets. There is no evidence in this case that such tickets existed and I think that we would request the court to take judicial notice that there is not always a transaction between an individual and a broker, that there may be a transaction between individuals, which would not require or even have any

sort of a confirmation slip.

BY MR. KOMOROFF:

Q Well, did you ask Mr. Mazzochi if he had any documents to show his right to possession of these notes other than this affidavit?

A No.

Q So, you never saw any other papers pertaining to Mr. Mazzochi's possession of these securities except for this affidavit?

A That is right.

MR. MARKOWITZ: Mark Exhibit 56.

Q Mr. McGraw, do you know if prior to August 1966, Mr. Mazzochi had ever requested the bank to open up a personal account for him?

A No, I don't.

Q Do you know if prior to August 4, 1966, Mr. Mazzochi acting either for himself or for others had any transactions with Royal involving any type of securities, government securities or otherwise?

A No.

MR. MARKOWITZ: Mr. McGraw, on the first of these three requests by Mr. Mazzochi to your bank to sell these treasury notes, I believe it was Mr. Kayner who approved or okayed, let's say, these re-

quests; is that correct?

THE WITNESS: It's my understanding.

MR. MARKOWITZ: Did Mr. Kayner have the authority to okay these requests without consulting with you?

THE WITNESS: Yes.

BY MR. KOMOROFF:

Q Mr. McGraw, had you prior to August 4, 1966 discussed Frank Mazzochi and his personal background with Mr. Arnold Dutchen or Mr. Haimowitz or any of the other men who were tied up or connected in some way with the Mutual Credit Union?

A Prior to August?

Q Yes, prior to the time that Mr. Mazzochi brought in the first batch of treasury notes.

A Well, in the inception when he became part of the management of the Mutual Credit, at that time I think I spoke to these--some of these gentlemen you mentioned as to his capability and background.

Q That would be in the early part of 1965, right?

A Around the time he went in there.

Q In the next 16 or 17 months, did you have occasion to talk to any one of these men who were affiliated with the Mutual Credit Union about Frank Mazocchi's back-

ground or his personal worth or his financial stability?

A Well, I think it was probably in August or September I spoke with Arnold Dutchen.

Q September of what year?

A '66.

Q Tell us what happened.

A Well, at that time I asked him what more he knew about Frank Mazzochi and he told me that he came from a wealthy family and that he had put in $30,000, I believe, into the Credit Union.

Q Arnold Dutchen told that to you?

A That's my recollection.

Q About when?

A I can't pinpoint the exact date.

Q Was it before you froze the proceeds of the $72,000 in securities or after?

A It would be around that time. Before or after, I can't pinpoint.

Q You mean when you had great doubts in your mind?

MR. HART: The witness didn't say that.

Q When the money was in suspense, was it during that period?

A It could have been. I'm not sure of the time, sir.

MR. MARKOWITZ: Don't tell him. Ask him what it was.

MR. BLEIWAS: When was this?

THE WITNESS: I think it was around 1965 when he first went in the Credit Union.

MR. BLEIWAS: And "he" means Mr. Mazzochi?

THE WITNESS: Yes.

MR. BLEIWAS: When "he" first went in, you mean Mazzochi?

THE WITNESS: Mazzochi.

MR. HART: What happened at that time?

THE WITNESS: He mentioned he put in $30,000.

BY MR. KOMOROFF:

Q Who had mentioned?

A Mazzochi.

Q Mr. Mazzochi had mentioned--

A Mazzochi, this is in the interview or conference when they applied--when the new management came in to apply for a loan.

Q This would be in February of '65; is that right?

A Around that area.

Q And Mr. Mazzochi told you he had made an investment of $30,000?

A Yes.

MR. HART: Who was present at that meeting?

THE WITNESS: Mr. Gutstein.

MR. HART: Who was present from the Credit Union?

THE WITNESS: Frank Mazzochi and Larry Rothberg.

MR. HART: So Larry Rothberg heard Mr. Mazzochi say he had invested $30,000?

THE WITNESS: Well, he was there. We didn't have any detailed discussion on it. He mentioned that, and as I recall it, that he had put money in there.

BY MR. KOMOROFF:

Q Did you take any steps to substantiate and corroborate this statement?

A No, sir.

Q Did you make any entries in the Mutual Credit Union file at or about the time that you had this conversation with Mr. Mazzochi to the effect that Mr. Mazzochi had made a personal capital investment of $30,000 in the Mutual Credit Union business?

A I don't recall.

Q Would you please look at the credit file that's here and see if you made such an entry?

Q And did you report that fact to your brother officers or anybody tied in with the bank or representing the bank?

A I don't recall doing that, no.

Q Did you report this fact to Mr. Stolz when you were talking to him?

A I don't recall.

Q Did you report this fact to Mr. Walter when you were talking to him?

A No.

Q Did you report this fact ever since the commencement of that action to Mr. Hart?

MR. HART: I'm sorry. I object to that and direct the witness not to answer that question.

Q You say Mr. Dutchen told you that Mr. Mazzochi came from a wealthy family.

Did you understand that to mean his father and mother?

A Well, yes.

Q Did you ever meet the parents of Frank Mazzochi, Jr.?

A No, sir.

Q Did you know anything about the parents of Frank Mazzochi, Jr.?

A No, sir.

Q Did you know where they lived?

A No, sir.

Q Had your branch office had any transactions with the parents of Mr. Mazzochi prior to August of 1966 involving amounts of $500 or more?

A Not to my knowledge.

Q Were there any transactions at all with them?

A Not to my knowledge.

Q Tell me: did you ever live in Williamsburg, Brooklyn?

A No, sir.

Q Do you know the neighborhood there?

A No, sir.

Q Is it your function as a bank officer, upon the opening of an account, to check as to the veracity and truth of statements contained on the interview sheet or on the signature card?

A Is it the responsibility of mine? Is that what you said?

Q Yes.

A Yes.

Q Did you check on the address of Frank Mazzochi at 247 South 3rd Street, Brooklyn, New York.

A No, sir.

Q Did you detail somebody to do that for you?

A No, sir.

Q So, you never made any inquiry really as to where Mr. Mazzochi lived? You relied upon the statement on the interview sheet?

A That is correct.

Q When Mr. Dutchen told you that $30,000 had been invested, did you develop this topic in further conversation with him?

A Which topic, sir?

Q The topic of the $30,000 investment.

A With Mr. Dutchen?

Q Yes.

A No, I accepted what he told me. That was it.

Q Well, there was available to you at all times, the bank records on the Mutual Credit Union account, together with the loan file, am I correct?

A Yes.

Q Did you make any reference to any of these bank records at any time between February of 1965 up until September and including September 1966 to see if the transactions between the Mutual Credit Union and your bank reflected this additional capital investment by Mr.

Mazzochi?

MR. BLEIWAS: I'm going to object to that question. There is no evidence that such additional capital invested would even have been reflected in the bank records. I'm going to object to that.

MR. MARKOWITZ: What is the question?

Q In any event, you may answer because your counsel is not directing you to refrain from answering.

MR. MARKOWITZ: Read the question, please.

(The pending question was read.)

A No.

Q Did you order any Dun & Bradstreet reports or any other credit reports to check into the veracity of the statements given to you by Mr. Mazzochi in early 1965 and the statement made by Mr. Dutchen in September of 1966?

A I don't recall anything. I believe we had a Dun & Bradstreet report in the file.

Q Did that reflect this $30,000 capital investment?

A I don't recall. I'd have to--

Q Would the Dun & Bradstreet report be in your credit file that is in the room now?

A It should be in there.

Q Would you be good enough to look at the Dun & Bradstreet report and tell us if that report reflects that

Frank Mazzochi personally made a $30,000 investment in the Mutual Credit Union Company?

MR. HART: For the reasons I have stated previously, I cannot permit the witness to look at that file in the course of this deposition.

MR. MARKOWITZ: Were periodical requests made of Dun & Bradstreet for financial reports on the Mutual Credit Union?

THE WITNESS: I don't recall. On a company like the Mutual Credit Union, Dun & Bradstreet gives us little or no information because people like credit unions are not in the market for credit. They have very little source of information.

BY MR. KOMOROFF:

Q They make reports to the State Banking Department, don't they?

A The credit unions?

Q Yes.

A Yes, sir.

Q They are under the supervision of the--

A The New York Banking Department.

Q That's right. So something of this would be an item of great interest.

MR. BLEIWAS: What does this refer to?

Q That would be a long time, beyond ten years prior to 1966; is that right?

A Yes, sir.

Q And you were familiar with the credit file on this account?

A Yes, sir.

Q And you were also familiar, of course, with bank balances and loan transactions; is that right?

A Yes, sir.

Q Continuously from the beginning?

A Yes, sir.

Q Had you in your experience with Mutual Credit Union's account heard of similar transactions where people coming into the Mutual Credit Union had made an investment of $30,000 or thereabouts?

A No, I never heard.

Q Did you know of any such investment prior to January or February 1965 by anybody who was in some way interested or involved in the business operations of the Mutual Credit Union?

A No, sir.

Q This was the very first time; is that right?

A Yes, sir.

Q Was it incumbent upon you in the performance of

your duties as a bank officer to make some written record of this fact that Mr. Mazzochi was coming into the Mutual Credit Union and was making this investment?

A Well, I don't know about him coming in--I don't understand that question.

Q Did you have to make some written notation in the performance of your duties as a loan and credit officer to indicate that Mr. Mazzochi's entry into the Mutual Credit Union was with a $30,000 capital investment?

A Well, I don't know whether it's his entry. He told me, as I recall it, that he had put it in. What time and what point of time he did it, I don't know.

Q When you say "he," you mean Mr. Mazzochi?

A Mazzochi.

Q Well, you met him around February of 1965, am I correct?

A About then.

Q And you say Rothberg was with him at the time?

A That's right, sir.

Q And isn't that just about the time that you met Mr. Mazzochi for the first time?

A I would say so, yes.

Q Well, did you understand from Mr. Mazzochi at that time that this was his first entry into the business

affairs of the Mutual Credit Union?

A Well, that was the first entry, to our knowledge, when he came in with Rothberg.

Q Yes, but when did he make this $30,000 investment?

A That I don't know.

Q In other words, you made no further inquiry to find out what the nature of the transaction was, this $30,000 investment?

A That's correct.

Q Well, was it a capital investment or was it possible that he loaned $30,000 to the Mutual Credit Union?

A I don't know the nature of the money going in, how it was labeled.

Q And you have never checked through your bank records to find out if the $30,000 in substance actually went into the Mutual Credit Union account?

A No.

MR. BLEIWAS: I object to the form of the question on the same grounds as previously stated. There is no evidence, there is nothing in this case to indicate that such capital investment by Mr. Mazzochi would be reflected in the bank's account.

Q Well, was the bank interested in information of this kind?

monthly balances of the Mutual Credit Union were in the four figures, am I correct?

A That's my recollection.

Q Is that the situation today?

MR. BLEIWAS: Objection.

A I don't know at the moment, sir.

Q Was that the situation in 1965 and 1966?

A Well, I'm answering based on my recollection over the years the way that the balances averaged.

Q About how much?

A Well, in the low, moderate four figures.

Q You mean between 2,500 and $5,000?

A Within that realm.

Q Would the loans to the Mutual Credit Union extend beyond those figures?

A Well, yes.

Q They would?

A Yes, the loans would be larger.

Q Tell me: were any members of this Mutual Credit Union ever obligated to the bank in connection with these loans on a personal basis?

A No, sir.

Q You didn't get any security at all?

A No.

MR. BLEIWAS: I have been listening for three weeks, for hours and hours as to the height and weight of people and where they live and where Havermeyer Street is. I'm asking questions that I think are relevant here and you can't stop me now, Mr. Komoroff.

Go ahead.

MR. MARKOWITZ: What was your last question?

MR. BLEIWAS: Read the question back.

(The requested portion of the record was read.)

MR. BLEIWAS: The people connected and participating in the Mutual Credit Union.

THE WITNESS: Well, in the area, the office, I believe, was on the Grand Concourse, originally on 149th Street, which is not a residential area. It's strictly a business area.

MR. BLEIWAS: The local business people would participate in the Credit Union, some of them?

THE WITNESS: As owner or management?

MR. BLEIWAS: Yes.

THE WITNESS: Yes, they were businessmen in the insurance or real estate business.

MR. BLEIWAS: As management, they generally

tion clearly and completely.

If you would like to stop the whole line of questioning, that's fine with me.

MR. BLEIWAS: I have no further questions along that line.

BY MR. KOMOROFF:

Q Mr. McGraw, did you have a talk with Conrad Hoffman at the bank concerning the withdrawals by Frank Mazzochi from his personal account?

A Yes, sir.

Q And did that lead to some action on the part of Conrad Hoffman?

A Yes, sir.

Q What?

A That he had prepared the forms furnished by the Federal Reserve Bank describing unusual withdrawals.

Q I ask you, please, to produce your copy of Exhibit NN.

MR. HART: Are those the forms?

MR. MARKOWITZ: NN is a letter.

MR. KOMOROFF: Let's mark this for identification, please.

(Copy of letter dated September 21, 1966 to the Federal Reserve Bank of New York from C. M.

Hoffman marked Plaintiff's Exhibit 58 for identification, as of this date.)

BY MR. KOMOROFF:

Q Mr. McGraw, did you ever see this letter or a copy of it before?

A I believe I did.

Q When?

A I'd say at the time it was written, September 21st.

Q Did Mr. Hoffman consult you then in connection with the preparation of this letter to the Federal Reserve Bank?

A He may have.

Q Does this letter correctly represent the situation as of the time it was written?

A Well, there may be--the account opened, I believe, I have it right in front of me, at $70,000. It looks like he's putting it all into one paragraph here.

Q Well, do you find any fault in any one of the four paragraphs in this letter?

A Well, instead of saying $138,000, I think to be real technical about it, it should be $170,168.42.

MR. HART: Isn't it a fact that everything in this letter has already been established by docu-

been established in one way or another by documents marked in this suit and the only purpose in your question is to try to catch the witness in some way where he disagrees with the documentary evidence.

MR. KOMOROFF: I take exception to the remarks that you made. We are trying to develop the facts. We are not trying to trap anybody.

MR. HART: There is no fact set forth in this letter which has not been established by documentary evidence already marked.

BY MR. KOMOROFF:

Q Mr. McGraw, the word "unusual" is used in the first paragraph of Exhibit 58.

Is that the way you would label this transaction?

MR. MARKOWITZ: The transaction described in this letter.

THE WITNESS: May I have the question again, please?

(The pending question was read.)

A Well, I didn't--you are asking me? Mr. Hoffman wrote the letter.

Q Well, did you use the word "unusual" in discussing this matter with Mr. Hoffman?

A Quite likely. I would say yes.

MR. MARKOWITZ: Did you believe this was an unusual transaction, Mr. McGraw?

MR. HART: What transaction are we talking about?

MR. MARKOWITZ: We are talking about the transaction described in the letter marked Exhibit 58.

MR. HART: Excuse me. Don't answer the question yet. Let me see what he's talking about here.

Would you please be more specific as to the transaction you are referring to.

MR. MARKOWITZ: Mr. McGraw, you have before you Exhibit 58 wherein the first paragraph states:

"Enclosed please find form representing an unusual currency transaction."

Do you agree with the characterization in that letter of the transaction being an "unusual currency transaction"?

MR. HART: Now, Mr. Komoroff asked the witness already whether in discussing this with Mr. Hoffman the witness used the word "unusual" with respect to these transactions and the witness answered, yes he did.

MR. MARKOWITZ: All right.

Did you make that answer?

THE WITNESS: I believe I did, yes.

MR. MARKOWITZ: Now, that was on September 21, 1966; is that correct?

THE WITNESS: That's correct.

MR. HART: What was on September 21st?

MR. MARKOWITZ: The letter.

MR. HART: Right.

MR. MARKOWITZ: And when for the first time did you realize that this was an unusually large currency transaction?

MR. BLEIWAS: I object to the form of that question. He didn't testify it was unusually large. He testified it was unusual.

MR. MARKOWITZ: All right.

Were you asked this question, and I am referring to page 193 of the criminal trial of Frank Mazzochi, Jr., in the Supreme Court, Bronx County:

"Q Tell us as far as your recollection what took place in this five or ten-minute period of time.

"A That it was an unusually large transaction."

MR. BLEIWAS: Mr. Markowitz, you are not concerning yourself now with this Exhibit 58 because this five or ten-minute conversation has nothing to

Q How old did Mr. Mazzochi appear to be to you in September of 1966?

A His early 30's.

Q Tell me: did you ever attend any meetings that the bank holds, you know, every month or every few months where you discuss business involving depositors?

A No, we don't have--

Q Referring to 1965 and 1966.

A There may have been meetings at various times.

Q Did you attend them?

A I have attended credit meetings.

Q Did you attend any meetings where other bank officers are there from your branch or from other branches and the general business of the bank is discussed?

A There may have been--there is no regular pattern to it. There may have been such meetings.

The only regul meeting that I have attended with other officers has b maybe about every six months or so when they may come up and go over certain loans. They travel from branch to branch.

Q Well, was Mr. Mazzochi's name ever mentioned at these meetings?

A I doubt it. I don't think so because I don't think the smaller loans--we don't take up the smaller loans.

Q Was the Mutual Credit Union's name mentioned at any of these meetings?

A Not that I recall.

Q Well, the loans that the bank has been making to Mutual Credit Union, are they considered in the category of small loans?

A Yes, sir.

Q What is considered to be a big loan by the bank?

A $50,000 and over.

Q Did you ever hear it said at the bank that these treasury notes were owned by Mr. Mazzochi's family?

A No, sir.

Q Prior to August of 1966, do you know of any transactions that took place at your bank within the same range as the sales of the treasury notes that were reflected for Mr. Mazzochi in August of 1966?

MR. HART: May I hear that question again, please.

(The pending question was read.)

MR. HART: Unless you identify individuals, periods of time, types of transactions or something that becomes meaningful, I cannot permit the witness to answer that question.

Q Well, from February 1965 to August 4, 1966, were

there any dealings at your bank between Mr. Mazzochi and your bank which were at the same range in scope, money-wise, as the treasury notes that Mr. Mazzochi brought in for sale in August of 1966?

THE WITNESS: May I have the question again, please.

(The pending question was read.)

A No.

MR. HART: By that, you mean the $140,000?

MR. KOMOROFF: No, he brought in $10,000 the first time, then $60,000 the second and then $70,000 the third time, all within a period of five or six days.

MR. HART: I just want to make it clear what the question is. For all I know, the answer may be the same for each but I would like to be clear whether your question is in regard to 10,000, 60,000, 70,000 or 140,000.

MR. KOMOROFF: All right, I will break up my question.

BY MR. KOMOROFF:

Q First let's take the $10,000.

A No, sir.

Q $60,000?

A No, sir.

Q $70,000?

A No, sir.

Q With respect to the accounts of which Mr. Mazzochi co-signs, did the bank during this period of February 1965 to August of 1966 have transactions of the same size and scope as what I have just mentioned?

MR. HART: Are you including or excluding Mutual Credit Union?

MR. KOMOROFF: I will include Mutual Credit Union.

Q Did they come in and ask for the sale of $60,000 or were they involved in a transaction with the bank involving $60,000?

A Not to my knowledge.

MR. HART: By that you mean a single transaction? You are not asking whether they were involved to the extent of $60,000 over any particular given period? You mean a single transaction?

Q Was Mr. Mazzochi's transaction a single transaction where he came in with $70,000 at one time and asked for the sale of these treasury notes?

A That is a sale of $70,000?

Q Yes.

volving the sale of securities ranging anywhere from $10,000 to $70,000.

MR. HART: Okay.

Do you have the question clearly now, Mr. McGraw?

A The answer is no, not to my knowledge, as I answered before.

Q Have you ever seen a billing from a stockbrokerage house to one of its customers with respect to the purchase of securities for that customer?

A Yes.

Q And were you familiar with what a billing from a stockbrokerage house looked like in August of 1966?

A Yes, sir.

Q With respect to the purchase or sale of securities?

A Yes, sir.

Q Did you ask Mr. Mazzochi when you were dealing with him in September 1966 if he had the authority to sell these treasury notes?

A Did I have a conversation?

Q Yes.

A Not that I recall.

Q Did you ask him if he had authority to use the

I am trying to clarify an apparent inconsistency so I would like the witness to be asked the question again--you may do it or I will--as to whether he had conversations with Mr. Mazzochi in 1966, since we all know he already said he has and he's discussed those conversations and told us the substance of them.

BY MR. KOMOROFF:

Q During the time that you spoke with Mr. Mazzochi in September of 1966, did you ask him if he had the authority to sell these treasury notes or any part of them and if he had the authority to personally make use of the proceeds to be realized on the sale of these $72,000 in treasury notes?

A I don't recall that I had any discussion in that respect.

Q In selling these treasury notes for Mr. Mazzochi, was the bank acting in the capacity of an agent for its depositor?

MR. BLEIWAS: Objection to the form of the question.

MR. MARKOWITZ: In what capacity was the bank acting?

MR. BLEIWAS: Objection. It's a matter of law to be determined by the court.

A No, sir.

Q Did you have any knowledge about anybody in Frank Mazzochi's family financially or otherwise prior to August 4, 1966?

A No, sir.

Q Did you know whether Frank Mazzochi was married or single on September 12, 1966, when you authorized the sale of the $72,000 of treasury notes?

A No, sir.

Q Did you have any knowledge about Frank Mazzochi's tie-up with any people or any organizations or companies other than with these four bank accounts that he was interested in as a signatory that were in your bank?

A No, sir.

Q Mr. Rothberg is an accountant, is he not?

A Certified public accountant.

Q And you knew him to be an accountant in 1965 and 1966?

A Yes, sir.

Q Did you ever have any talks with him as to the financial stability of Frank Mazzochi personally?

A No, sir.

Q In 1965, you didn't?

A No, sir,

A No, sir.

MR. MARKOWITZ: Referring to Exhibit 23, Mr. McGraw, who wrote in the words "Mutual Credit Union and Finnog, Limited"?

MR. HART: Thosewords appear under the printed words in the center of the page on the left: "Affiliated accounts."

THE WITNESS: I think one of the young ladies in our branch, who get these things passed on to them, they complete some of the details on it.

MR. MARKOWITZ: What was the purpose of the officers initialing that exhibit, the interview sheet?

THE WITNESS: So that we all have knowledge of the new accounts.

MR. MARKOWITZ: And if there is anything different or unusual in the new account, would it be a subject of discussion between the officers?

THE WITNESS: Yes, that would be a purpose.

MR. MARKOWITZ: Do you recall any discussion with any of the other officers who initialed that interview sheet?

THE WITNESS: No, sir.

MR. MARKOWITZ: You didn't think it was necessary to discuss this new account with anyone else?

THE WITNESS: No, sir.

MR. MARKOWITZ: All of the other officers who initialed that sheet, are they lower than the office you occupy or higher? Are any of them higher than you?

THE WITNESS: Yes, Mr. Gutstein is a vice president. I believe this is Mr. Kayner's initial. He was lower. This "B.A." is a clerk, I believe, in the analysis department. I don't recognize this initial here, right off (indicating).

MR. MARKOWITZ: Did you give the girl who wrote in that, instructions to write that on Exhibit 23?

THE WITNESS: I don't recall that I did. The girls follow through on that and from our card-reference records, they fill in those things.

MR. MARKOWITZ: Well, how would the girl know what the affiliated accounts were unless somebody gave her that information?

THE WITNESS: She would know from the cross-reference.

MR. MARKOWITZ: What cross-reference?

THE WITNESS: We have cards which indicate our accounts and with whom they are affiliated.

MR. MARKOWITZ: Well, when this account was opened, who in your bank would know with what accounts Mr. Mazzochi was affiliated?

THE WITNESS: Well, the various officers knew the connections.

MR. MARKOWITZ: Are the officers in the bank generally familiar with the average balances of any depositor's account?

THE WITNESS: You mean at any particular time?

MR. MARKOWITZ: Yes.

THE WITNESS: As a general method of operation, we are aware of certain people carrying certain balances.

MR. MARKOWITZ: So that when Mr. Mazzochi--

THE WITNESS: But--

MR. MARKOWITZ: Finish your answer.

THE WITNESS: I was going to finish by saying that we are aware of certain accounts that they keep $5,000, $10,000 roughly.

MR. MARKOWITZ: So when Mr. Mazzochi came in, you and the other officers who initialed that account knew about the average balances carried by Mutual Credit Union and by Finnog, Limited; is that

right?

THE WITNESS: It was available to us. Whether we knew it at that moment, I don't know.

BY MR. KOMOROFF:

Q Mr. Witness, what was the basic fact or circumstance that alerted you to freezing the proceeds on the sale of the $72,000 in securities, government securities?

A The fact that they were sold and the money was taken out in substantial withdrawals.

Q And you didn't ask Mr. Mazzochi as to what he had done with the $140,000 in cash?

A No, sir.

MR. MARKOWITZ: This Exhibit 58 encloses a form representing, and I'm quoting, "an unusual currency transaction," and mentions the figure of $140,000 and $138,000 and that is a covering letter for this Exhibit 59, which is a report of the currency transactions, am I correct?

THE WITNESS: That is correct.

MR. MARKOWITZ: Now, I show you Exhibit 60, which is the second report of currency transaction. Was there a similar covering letter sent to the Federal Reserve Bank of New York showing that this report of currency transaction, Exhibit 60, was

A Should I use the specific names?

Q Sure, if you can.

A Mr. Dutchen and his family had been in that 149th Street area for many, many years, always were highly regarded and I don't know exactly how much he was worth but they were reputed to be fairly well off.

A man named Mr. Lubash, Manny Lubash, was also in the area for maybe 30 years or so. He was very well regarded. I don't have any knowledge as to his personal worth but he was looked upon as a man of some substance.

MR. KOMOROFF: When you used the word, "he," do you mean Mr. Mazzochi or these people?

THE WITNESS: These people, Mr. Lubash and Mr. Dutchen.

A (Continuing) There is another man there, Ed--his last name escapes me at the moment. He and his father had been in business in the 149th Street area for years and years and he was--again, I don't have his statements in mind--but he was considered responsible and he had some substance to his wealth or his statement.

MR. KOMOROFF: You confuse me with the use of the pronoun "he." You are not referring to Mr. Mazzochi here, are you?

THE WITNESS: No, I am referring to the man

whose last name at the moment escapes me. I will think of it. His first name is Ed.

MR. KOMOROFF: I move to strike out these answers. This really has nothing to do with the issues in the case. It's irrelevant, incompetent and immaterial.

THE WITNESS: Excuse me, I just remembered that last name: Gotthelf.

BY MR. HART:

Q As the expression is used in the banking business, were these people, as you have described, said to have been references for Mr. Mazzochi?

MR. KOMOROFF: I object to the form of that question.

A Yes. The fact that they continued their association with the Credit Union when he came in there was quite a reference.

Q Finally, you said earlier today with reference to Plaintiff's Exhibit 23 that it was your function to check on the veracity of these statements contained on this interview sheet.

Did you mean by that that it was the bank's function or it was your personal function?

A My personal function.

MR. MARKOWITZ: Well, Mr. McGraw, didn't it appear unusual to you that Mr. Mazzochi brought in these treasury notes on four different occasions for the bank to sell rather than at one time?

THE WITNESS: No.

MR. MARKOWITZ: Well, wouldn't it be normal procedure for a man who owns treasury notes in that quantity to bring them in at one time?

MR. HART: I object to that. I mean, that can be determined only from the state of mind of the person who owns the notes. If he wants to sell them all at one time, then it would be unusual not to bring them in at one time. On the other hand, if he didn't want to sell them all at one time, it would be most unusual to bring them in to sell them all at one time.

MR. MARKOWITZ: Wasn't it unusual, in your mind, for Mr. Mazzochi to bring in one note for $10,000 on a particular day and later in the day to bring in an additional $60,000 worth of treasury notes? Wasn't that unusual?

THE WITNESS: No, because they were marketable securities. A man can change his mind in five or ten minutes and sell 100 shares or sell 10,000 bonds.

man to bring in a $10,000 treasury note in one day and in the same day appear with $60,000 worth of treasury notes, wasn't it?

MR. HART: The witness has just answered that question.

MR. MARKOWITZ: Was it unusual?

THE WITNESS: No.

MR. MARKOWITZ: Was it unusual or didn't it appear unusual to you that Mr. Mazzochi was making withdrawals consistently of $10,000 at a time in cash? Was that unusual?

THE WITNESS: That could be unusual.

MR. MARKOWITZ: Yes. Now, couldn't Mr. Mazzochi have taken these treasury notes directly to Merrill Lynch or any other stockbroker rather than bring them into the bank for the bank to sell?

THE WITNESS: I suppose so.

MR. MARKOWITZ: Did you ever ask him why he didn't go to a stockbrokerage house?

THE WITNESS: No, sir.

MR. MARKOWITZ: And this was the first time, as I understand it, that the bank ever had occasion to sell treasury notes for a customer, was it not?

THE WITNESS: The first time that we ever

Thereupon

R. G. HAWTHORNE,

a witness, was called for examination by counsel for plaintiff and, after having been sworn by the notary, was examined and testified as follows:

EXAMINATION BY COUNSEL FOR PLAINTIFF

BY MR. KOMOROFF:

Q Mr. Hawthorne, what is your official title?

A My title is Chief of the Division of Loans and Currency, Bureau of the Public Debt.

Q Have you been served with a subpoena in this action entitled "United States Fidelity and Guaranty Company vs. Royal National Bank of New York, et. al."?

A We received a subpoena -- a request or notice that was approved by Mr. Winston, who is the General Counsel of the Bureau of Public Debt.

Q And that subpoena requested the production of various records of the Bureau of Public Debt?

A Yes.

Q And you have had certified copies made of various records of the Bureau of Public Debt as are pertinent in this case. Is that correct?

MR. HART: May we mark a copy of the subpoena?

MR. KOMOROFF: I have it. I put it somewhere.

BY MR. KOMOROFF:

Q Would you be good enough to tell me if the photostat of what I have is a copy of the subpoena that was served upon you as Chief of the Division of Loans and Currency?

A Yes, this is it.

MR. KOMOROFF: Do you want that marked?

MR. HART: Yes.

MR. KOMOROFF: We will mark this as Plaintiff's No. 1.

(Plaintiff's Exhibit No. 1, a subpoena, was marked for identification and was retained by counsel.)

MR. HART: This subpoena makes reference to a letter to Samuel Komoroff by R. G. Hawthorne. That is you, Mr. Hawthorne?

THE WITNESS: Yes.

MR. HART: It is dated March 29, 1971. Since that letter would seem to relate, to some extent to the scope of this examination, may we mark a copy of that letter along with the subpoena?

MR. KOMOROFF: All right. Let's do that.

BY MR. KOMOROFF:

Q Mr. Hawthorne, I show you a copy of a letter dated March 29, 1971, and ask you if that is a correct copy of the

letter that you sent to me at or about that time.

A It appears to be an exact copy of it.

MR. KOMOROFF: We will mark the letter and the attached papers as Plaintiff's Exhibit No. 2.

(Plaintiff's Exhibit No. 2, a letter with attached papers, was marked for identification, and was retained by counsel.)

BY MR. KOMOROFF:

Q Now, Mr. Hawthorne, in furtherance of this letter dated March 29, 1971, that was just marked for identification as Plaintiff's Exhibit No. 2, have you had certified copies made of all writings, records, papers, documents, certificate of ownership, correspondence, et cetera and the certain things related to the loss and redemption of the 26 United States Treasury notes, whether matured or overdue that are described in the letter that you sent to me dated March 29, 1971?

A We have had certified copies, not of all material in the file, but all copies of material which appeared to be pertinent and responsive to your letter -- to your request.

Q Would you be good enough to identify the records that were selected by your office as pertinent to our litigation and which you have produced here as certified copies? If you will identify them, we can mark them and get them into this

missioner of the Public Debt. Is that correct?

THE WITNESS: That is correct.

MR. KOMOROFF: On May 5, 1971. Is that correct?

THE WITNESS: That is correct.

MR. HART: So the record is clear, you mean eight pages -- you mean eight documents? There are more than eight pages.

MR. KOMOROFF: Here is what we will do. I will count the pages. For the record, let it be stated that there are 11 pages which consist of eight separate documents and these are all under the heading of "Certification A." We will mark this for identification as Plaintiff's No. 3.

THE WITNESS: I would like to add that the documents are under the Treasury Department seal as well as the statement by or the signature of Mr. Merritt, the Commissioner of the Public Debt.

(Plaintiff's Exhibit No. 3, 11 pages under heading of "Certification A" were marked for identification, and was retained by counsel.)

BY MR. KOMOROFF:

Q The seal, which is impressed upon the blue ribbon, is the official seal of the Department of the Treasury. Is that correct?

A Yes, that is correct.

Q Now, Mr. Hawthorne, do you have the packet of papers which are marked B?

A Yes.

Q May I have them, please?

A Yes.

(A pause.)

Q Am I correct in stating, Mr. Hawthorne, that the packet you have just handed to me is under the seal of the United States Treasury and which is signed by Mr. Merritt and which is certified by Mr. Merritt as Commissioner of the Public Debt and which is marked as packet B consisting of Exhibits B-1 to B-7 inclusive, consisting of eight pages? In other words, eight pages covering seven documents and that the papers are true photographic copies and duly certified by the Commissioner of the Public Debt?

A Yes.

Q And these were prepared under your supervision and direction?

A Yes.

MR. KOMOROFF: I ask that these be marked for identification as Plaintiff's No. 4.

(Plaintiff's Exhibit No. 4, B-1 to B-7 inclusive, marked for identification and was retained by counsel.)

BY MR. KOMOROFF:

Q Now, do you have packet C?

A Yes, I do. Here they are.

Q Thank you. Now, Mr. Hawthorne, am I correct in saying that packet C consists of eight pages, comprising five separate documents marked as C-1 to C-5, inclusive, and that the photographic copy and annexes to this packet are true photographic certified copies and were so made by Mr. Merritt as Commissioner of the Public Debt under the true official of the Department of Treasury?

A That is correct.

MR. KOMOROFF: I ask that this be marked as Plaintiff's No. 5.

(Plaintiff's Exhibit No. 5, C-1 to C-5, inclusive, was marked for identification and was retained by counsel.)

BY MR. KOMOROFF:

Q Have you produced packet D?

A Yes.

Q And am I correct in stating that packet D consists of seven separate pages of documents marked D-1 to D-5, inclusive?

MR. HART: Four or five?

MR. KOMOROFF: Five. Marked D-1 to D-5, inclusive, and that these are true photographic copies of said documents and are duly certified as such by Mr. Merritt as Commissioner of the Public Debt under the seal of the Treasury?

THE WITNESS: That is correct.

MR. KOMOROFF: May I have these marked for identification as Plaintiff's No. 6?

(Plaintiff's Exhibit No. 6, D-1 to D-5, inclusive, was marked for identification and was retained by counsel.)

MR. HART: I would like to state that I believe, with respect to Plaintiff's Exhibit 3, 4, 5, and 6 for identification, that when you gave the number of pages, Mr. Komoroff, you gave the number of pages attached to the certification sheet but did not count the certification sheet.

MR. KOMOROFF: No, I did not count the certification sheet. To me that is like an index.

BY MR. KOMOROFF:

Q Mr. Hawthorne, do you have any further certified copies of official documents?

A Yes. Two others that are marked E and F. E is under the Treasury Department and is certified as being a true copy and a face of $5,000. 1970 No. 2214.

Q Is there just one document attached?

A Yes.

Q That is actually certified by Mr. Merritt to be a true certified copy with the seal of the Department of Treasury attached?

A That is right.

MR. KOMOROFF: Please mark this for identification as Plaintiff's No. 7.

(Plaintiff's Exhibit No. 7, E, was marked for identification and was retained by counsel.)

BY MR. KOMOROFF:

Q Do you have any other certified copies?

A Yes. The F packet, which has been certified as a true copy and is under the seal of the Treasury Department and was certified by Mr. Merritt, the Commissioner of the Public Debt, which consists of photographic copies, faces and backs of coupons -- 5% Treasury notes, Series A 1971 and the number of these. 25 of these notes and the numbers are in the certification.

Q You have got the 25 numbers listed in the certification?

A Yes.

Q Do you have 25?

A Yes.

Q Photocopies of the Treasury notes attached to the certificate of certification?

A That is correct.

Q And the certificate is signed by Mr. Merritt under the seal of the Department of the Treasury?

A That is correct.

Q So that the photographs of the copies attached to top blue certificate are true copies of the originals on file in the Department of the Treasury?

A That is correct.

MR. KOMOROFF: I will ask that this packet F be marked for identification as Plaintiff's No. 8.

(Plaintiff's Exhibit No. 8, F, was marked for identification and was retained by counsel.)

BY MR. KOMOROFF:

Q Now, Mr. Hawthorne, were you employed in the Division of Loans and Currency, Bureau of Public Debt, in 1966?

A Yes, I was.

MR. HART: May I interrupt? Before you begin asking questions of Mr. Hawthorne, may we establish by what authority he is authorized to testify? I believe the statutes of the Unites States permit his superior to impose such restrictions

there has been no other correspondence with Mr. Komoroff.

MR. HART: Nothing prior to the April 2, 1971, letter?

THE WITNESS: No. There has been correspondence that would be part of the material exhibits.

MR. KOMOROFF: Mr. Hart, am I correct in saying that the litigation involves 26 different U. S. Treasury coupon notes of the Series A 1970?

MR. HART: I don't understand.

MR. KOMOROFF: There is an exhibit in the case that recites 26 different coupons, 5% Treasury notes, Series A 1970.

MR. HART: Don't ask me. If you want to make a statement, make a statement.

MR. KOMOROFF: I want to show that all we are dealing with are the different Treasury notes relating to the issues in this case because the list of the securities annexed to the complaint itself.

MR. HART: I suggest you so state.

MR. MARKOWITZ: He stated it, so let's proceed.

BY MR. KOMOROFF:

Q Mr. Hawthorne, you were in the Department of the Bureau of Public Debt in 1966?

A Yes.

Q For how many years prior thereto? Was it more than

10 years?

A I was in the Bureau of the Public Debt from 1943 until 1958 and was then assigned and worked in the office of the Treasurer of the United States, which is an office in the Treasury Department until February 23, 1966. I returned to the Bureau of Public Debt as Assistant Chief of the Bureau of Loans and Currency.

Q How long were you out of the Bureau of Public Debt in round figures?

A 8 years.

Q Were you familiar with the practices and procedures in the Bureau of Public Debt?

A Yes.

Q Now, did you work under Mr. H. M. Stevenson, the Chief of the Division of Loans and Currency?

A Yes.

Q Now, was it one of the functions of the Bureau of Public Debt to keep records of missing or stolen Treasury notes or bonds?

A We keep records in the way of claims or reports to us of loss; whether stolen or just disappearances or --

Q Or mysteriously missing?

A Yes. These are reported to us and we then make a

file and attempt to develop whether or not there would be any possibility of granting relief based on the circumstances and whether or not the securities have been matured. When this comes in -- one of the first things we do when the report comes in is to advise the Division of Retired Securities and we give them a description of the security by loan title, denomination, and series number. They will enter an inquiry number in their ledger of securities which are maintained by title and denomination and serial number. If the security has not been received in the Department for any purpose, we will proceed to get further information on the claim and we will grant -- if the security has not come in for any purpose and has been honored on a proper transaction. When a security matures, we can then proceed to grant relief. We don't have, at any one place, lists of all the securities that are reported lost or stolen or destroyed.

Q But the information would be kept within the area of the Bureau of the Public Debt. Is that correct?

A Yes.

Q Now, would any such record, relating to missing or stolen or mysteriously disappearing securities, be kept in any other Federal agency?

A No.

Q I am referring to the year 1966. I would ask you if records of the lost, theft, or destruction of Treasury securities in the year 1966 were kept with any Federal Reserve bank or branches or whether those records were kept only by the Bureau of the Public Debt?

A As far as the Treasury Department is concerned, the only official record is in the Treasury. Whether or not the Fed bank keeps a record, would not be at our request or any direction from the Department. I have no knowledge of this. As far as I know, there was no such record in any Federal Reserve Bank.

Q Now, were you with the Department in 1969? Were you with the Bureau of the Public Debt in October of 1969?

A Yes.

Q I will show you a letter dated October 3, 1969, sent to Samuel Komoroff by H. M. Stevenson, Chief of the Division of Loans and Currency and ask you to read this letter and tell us if the contents of this letter refers to the policy of the Department of the Treasury, Bureau of Public Debt, for the year 1966?

A Are you asking that I read the letter?

Q Please read that letter and tell us if that represents the policy of the Bureau of the Public Debt as it operated in

1966.

A Yes. This was the policy that was in effect.

Q I ask you, Mr. Hawthorne, if this copy that I hand you now is a correct copy of that October 3, 1969, letter that you have just read.

A Yes.

Q For the record, let me say that the record that you are now looking at is D-5 of Plaintiff's Exhibit No. 6 and is marked for identification.

A Yes. That is the same.

MR. KOMOROFF: I will ask that this copy of the October 3, 1969, letter, addressed to Samuel Komoroff be separately marked for identification as Plaintiff's Exhibit No. 9.

(Plaintiff's Exhibit No. 9, letter dated October 3, 1969, addressed to Samuel Komoroff, was marked for identification and was retained by counsel.)

BY MR. KOMOROFF:

Q Now, you are familiar with the practices and procedures of the Bureau of Public Debt in 1966 --

A Yes.

Q -- while Mr, Stevenson was in charge of the office?

A Yes.

Q Now, was Mr. Stevenson correct in making this statement to me, which is on page 1 of Plaintiff's Exhibit 9?

MR. HART: I will object to the form of the question.

BY MR. KOMOROFF:

Q "The loss, theft, or destruction of Treasury securities should be reported to this Division and all inquiries concerning them should be addressed to this office. The Federal Reserve banks and branches do not keep such records and inquiries forwarded to this Division."

A That is correct. That was the policy in 1966.

MR. HART: Am I correct that we are continuing this examination pursuant to the usual stipulations including all objections are reserved to the time of trial?

MR. KOMOROFF: That is one of the rules.

MR. MARKOWITZ: Let's have it on the record that counsel agrees that any objections as to the materiality of any question is reserved for the trial, except as to the form of the question.

MR. HART: Not only objections as to materiality. All objections except the form of the objection is reserved for the trial.

BY MR. KOMOROFF:

Q I am referring to page 2 of the same letter of October

3, 1969, over the signature of H. M. Stevenson, addressed to Samuel Komoroff. This is Exhibit No. 9. Was it the policy of the Bureau of Public Debt in 1969 as follows: "The Department does not circulate lists showing the serial numbers of lost or stolen securities nor are Federal Reserve banks or branches required to maintain such lists, as the need to consult such lists would seriously impair the negotiability as their issuance in borrower form is designed to promote."

A That is correct. That was the policy in 1966.

Q Now, do you know whether or not any other Federal agencies like the FBI or the United States Secret Service in 1966 carried such lists?

A It is not possible for me to keep up with what these other agencies are doing.

Q You don't know anything about that?

A That would be in the course of their own operation and we have records of stolen securities and things reported to them. I have no way to know what they have.

Q Now, in 1966 did the Bureau of Public Debt have to give such information, either to the FBI or the U. S. Secret Service, under some rule or some authority in one of the Federal laws?

A No. We do not. We do not -- are not required to

give this information to them. Of course, we will give them information on any case in which they are involved and they have a right to know.

Q If they ask for it?

A Right.

Q In other words, if such a request was made by the Federal Bureau of Investigation or the United States Secret Service, you would give them the information?

A We would give them information concerning the status of securities.

Q But the Bureau of the Public Debt in 1966 was under no responsibility --

A That is right.

Q -- to furnish such information to any of these two agencies that I have just mentioned, like the FBI or the U. S. Secret Service?

A Yes. That is true.

Q Now, tell me, Mr. Hawthorne, you are reasonably familiar with the proceedings that have been initiated with respect to the 26 U. S. Treasury notes that are involved in this lawsuit, and that we have been talking about today, sir. Is that correct?

MR. HART: I object to the form of the question.

MR. MARKOWITZ: Do you have a record of those Treasury notes before you?

THE WITNESS: What do you mean by "a record"?

MR. MARKOWITZ: Do you have the notations and the numbers of the Series E?

MR. HART: I object to the form of that question also.

THE WITNESS: Yes.

BY MR. KOMOROFF:

Q What I want to know is this. Did the FBI or the United States Secret Service, at any time since August of 1966, make an inquiry from the Bureau of the Public Debt with respect to any of these 26 United States Treasury notes which are marked for identification as Exhibit 7 and 8?

A To my personal knowledge -- I don't have any personal knowledge as to any inquiry by them. I don't know that the file -- the file may or may not reflect this. I have not made a thorough review of the file. Mrs. Pryor and Mr. Shoemaker might be better competent to answer that question, but to my own personal knowledge there was no such inquiry.

MR. MARKOWITZ: Do you have the entire file before you now?

THE WITNESS: Yes. Let me point out one thing. You asked if we have a record of the notes. We know what was reported. We have a record of the notes reported lost or stolen. Now, the actual information as to the retirement of these notes may

or may not be in this file because the notes, when they come to the Division of Retired Securities -- the Chief of that Division would be available to answer any inquiries you may have about the information on the file of this Division as to the receipt and source of receipt and so forth. Normally, in the normal course of handling claims, as these notes do come in, that Division will notify the Division of Loans and Currency so we will be on notice that they are now in and will guide us accordingly with regard to the claim. A lot of these notes have come in at maturity as a result of the maturity in November of 1970 and I am not sure that all of -- since a lot of these -- sometimes there is a backlog of work there and it will take them time to get the information to us. Our file may not reflect all of the information that is now in. It would be in the hands of the Division of Retired Securities.

BY MR. KOMOROFF:

Q We were trying to find out a little earlier if any inquires were made by the United States Secret Service or by the Federal Bureau of Investigation in 1966 or 1967, with respect to any one of these 26 notes and if your file would show that.

A If you like, I will look through the file and see.

Q Why don't you do that, please.

memos between us and our legal people?

MR. MARKOWITZ: Mr. Hart made a request on the record concerning other documents not listed in these exhibits that we have already marked. I don't think you have to identify them now.

MR. HART: Mr. Blair confirmed to me that if I mailed a request to you in writing for copies of all the documents in your file, which would include interoffice memoranda that was not furnished as part of the certified copies, 3 through 8 for identification, then your Department will furnish copies to me or identify for me those documents your Department feels it cannot produce and state why they cannot be produced. That would include internal and external and they will all be covered when I make that request.

THE WITNESS: On August 18, 1967, a memorandum sent from Mr. Stevenson to the Secret Service on the same subject notifying the Secret Service that the Department records showed that $10,000 notes numbered 112254, 112255, 112271, 112307, 117182, 117185, 117186, 117187, 117188, were received in the Federal reuse transaction in August and September of 1966. This is as a matter of information.

MR. MARKOWITZ: Mr. Hawthorne, did the Bureau of Public Debt receive any inquiry from Wallace H. Nathan, Regional Counsel located at 33 Liberty Street, New York, New York,

concerning an inquiry with respect to these Treasury notes; these 26 Treasury notes? Do you have such a letter in your file?

THE WITNESS: Wallace Nathan?

MR. MARKOWITZ: He is the Regional Counsel for the Regional Administration of the National Banks located at the Federal Reserve Bank of New York.

THE WITNESS: Not to my knowledge. I will review the files.

BY MR. KOMOROFF:

Q I have here a copy of a letter sent to me by H. M. Stevenson dated February 5, 1968, where I had originally made an inquiry of the Comptroller of the Currency concerning the identification of people presenting United States securities to banks for payment and I have written, originally, the Regional Administration of the National Banks and on January 17, 1968, I heard from Wallace S. Nathan who said, "We have taken the liberty of referring your inquiry to the Bureau of Public Debt, United States Treasury, Washington, D. C., since this matter appears to come within the jurisdiction of that organization."

A Yes. I found copies of his letter.

Q I would like to see the letter Mr. Nathan wrote to

the Bureau of Public Debt.

A Yes.

Q May I see that, please?

A Yes.

Q This letter of January 16, 1968, is part of your official file. Am I correct?

A Yes, it is.

MR. KOMOROFF: I would like to have this marked for identification, this letter of January 17, 1968, which was sent to the Bureau of Public Debt by Wallace H. Nathan and respectfully ask you for a copy of that.

MR. HART: Would this fall within the request?

MR. BLAIR: No. We have a subpoena from them.

(Plaintiff's Exhibit No. 10, a letter dated January 17, 1968, was marked for identification, and was retained by counsel.)

MR. MARKOWITZ: Is it necessary to have this Exhibit 10 certified before it is admissible?

MR. HART: Let me state a stipulation and see if it is acceptable to you. With respect to any documents that come out of Mr. Hawthorne's office file, I would be prepared to stipulate -- I have no objection as to the authenticity of that document.

was marked for identification and was retained by counsel.)

MR. KOMOROFF: Please mark as Plaintiff's Exhibit 13 a memorandum dated January 10, 1968, from Mr. Komoroff to the office of the Comptroller of the Currency, 33 Liberty Street, New York City.

(Plaintiff's Exhibit 13, a memorandum dated January 10, 1968, was marked for identification and was retained by counsel.)

THE WITNESS: I have completed reviewing the file and I have found no other notations or references of any inquiry -- other inquiry by the FBI or Secret Service.

BY MR. KOMOROFF:

Q Now, have you found any inquiries while you were rambling through the official file that were made by any other Federal agency in addition to the FBI or the United States Secret Service?

A No.

Q Am I correct that the Federal Reserve bank has no authority to make any statements on behalf of the Bureau of the Public Debt?

MR. HART: I object to the form of the question.

BY MR. KOMOROFF:

Q You can answer that, even though he objected to the form of the question.

A Well, the Federal Reserve banks are fiscal agents of the Treasury Department and in their role they account for the Bureau of the Public Debt -- the Treasury Department, in transactions and securities from the issuance -- from the time of sale they were originally issued and authorized to be sold by the Bureau of Public Debt and through exchange of securities or denominations of exchange, redemption and so forth, they are acting in accordance with the regulations of the Department. 300 covers the regulations of the Treasury notes and bonds which Federal Reserve banks are governed by and they are instructed by various, what we call "FRB," Federal Reserve bank memoranda in connection with the various procedures and accounting for securities and cash proceeds and so on.

Q Was the Federal Reserve bank in New York City, the New York City branch, required under any Federal regulation to keep listings of stolen or destroyed or mysteriously missing United States Treasury notes?

A No, they were not. In fact, it would be a violation of Department Circular 300, which governs regulations with respect to United States securities. It would be a violation of that regulation to do so, as far as the agency of the

Treasury Department is concerned.

Q Just the way Mr. Nathan, in writing to the Bureau of Public Debt on January 17, 1968, stated this was a matter under the jurisdiction of the Bureau of the Public Debt with respect to securities that were missing or stolen. Were such claims made against the United States?

A Right.

MR. HART: I object to the form of that question. If that was a question.

BY MR. KOMOROFF:

Q Did you understand the question, Mr. Hawthorne?

A Would you repeat it?

Q If it was not clear, I will try to clarify it.

MR. KOMOROFF: Would you read it back?

(The question referred to was read by the reporter.)

BY MR. KOMOROFF:

Q Did you understand that question?

A Yes.

Q I am discussing with you, Mr. Hawthorne, the keeping of records and listings relating to the loss, theft, or destruction of securities. That is what we are discussing. Is that correct?

A We keep the official records of the Treasury Depart-

ment on securities, lost or stolen.

Q So your response to me, relating to records kept at the Bureau of the Public Debt, relative to the loss, theft, or destruction of Treasury securities was that these records were kept only at the Bureau of Public Debt. Is that correct?

MR. HART: I object.

THE WITNESS: The only official records of the Treasury Department are kept at the Bureau of Public Debt.

BY MR. KOMOROFF:

Q Those records would be kept only at the Bureau of Public Debt and not at any Federal Reserve bank?

A What records?

Q Records dealing with the loss, theft, or destruction of Treasury securities.

A Yes. Records relating to loss, theft, or destruction, the claim comes to the Bureau of Public Debt and we are the sole agency concerned with evaluation and settling the claims.

Q So all inquiries concerning such securities would be referred to your Bureau by some other Federal agency, if a request for information was made from this other agency?

A I don't know. I am not sure I follow you. What other inquiries would be referred? Could you give me an example? Let me say this. If someone reports to a Federal

Reserve bank that they have lost a security, they would refer them to the Bureau of Public Debt for action and reply in what they should do and whether or not relief can be granted and so on.

Q Would the Federal Reserve bank be in a position to grant relief to an inquiry?

A No, they would not.

Q Now, can there be any doubt but that the situation that you have just described to us was a situation that obtained in the year 1966?

A The procedure has been the same for many years.

MR. KOMOROFF: That is all I have.

EXAMINATION BY COUNSEL FOR
ROYAL NATIONAL BANK OF NEW YORK

BY MR. HART:

Q You said, Mr. Hawthorne, that the file which you have in front of you is the file that is open when a report is received of loss or missing securities. Is that correct?

A Yes.

Q And it is correct that that is the only file, the file you have in front of you, that is maintained by the Bureau of Public Debt relating to the report of W. E. Hutton and Company and referring to lost Treasury notes. Is that correct?

A This is the official claims file. I don't know what

MR. KOMOROFF: I don't know if Mr. Hawthorne is really qualified to answer that.

MR. HART: I think he is best qualified to tell you.

THE WITNESS: You said "the Government." Are you talking about the Treasury Department and the Federal Reserve bank as agents?

MR. HART: Yes.

THE WITNESS: We don't investigate title. We are not required to investigate title. As long as it is not overdue, as stated in the regulation.

BY MR. HART:

Q Mr. Stevenson wrote a letter to Mr. Komoroff under the date of February 5, 1968, which has been marked as Plaintiff's Exhibit No. 12 for identification, in which he made the following statement, "They are referring to bearer's securities that are issued primarily for the convenience of those persons who desire easily negotiable securities, and in view of the great volume of transactions in such securities and the need for their immediate marketability, the Treasury Department and the Federal Reserve banks and branches do not, and cannot, assume any responsibility whatever to investigate title to them when they are presented in regular course. Nor are banks and security dealers required to do so." Is that an accurate

statement of the policy of the Treasury with respect to bearer securities?

A Yes.

Q And are the securities which are in the packet marked as Plaintiff's Exhibit 7 and 8 for identification, 5% Treasury notes Series A-1970, dated February 15, 1966, and due November 15, 1970, bearer securities within the meaning of the Department's policy?

A Yes, they are.

Q Does the Department have a policy regarding whether or not lost or stolen or missing Treasury notes should be reported?

A Should be reported?

MR. MARKOWITZ: Just a moment. Read that question.

(The question referred to was read by the reporter.)

THE WITNESS: I think the regulations are clear on this. If you want to get relief, or want to get replacement or payment, you have to file and get it reported and have the Department approve your claim in accordance with the procedures and requirements.

BY MR. HART:

Q Is it the policy of the Department to recommend or even require that such a loss should be reported promptly?

IT IS FURTHER STIPULATED AND AGREED that counsel for plaintiff shall furnish a copy of the within deposition to counsel for defendants, without cost.

oOo

A R N O L D D U T C H E N, called as a witness by plaintiff, being first duly sworn by the Notary Public (Richard Greenspan), testified as follows:

EXAMINATION BY MR. KOMOROFF:

Q Mr. Dutchen, where do you live?

A 2244 Bronx Park East, Bronx, New York.

Q Mr. Dutchen, what is your business?

A I am an insurance broker and I am located at 318 East 149th Street, Bronx 10451.

Q How long have you been in the insurance business?

A Twenty-four, 25 years.

Q You are a high school graduate, of course?

A Yes.

Q Did you go to college?

A I had two years of college and then I was drafted into the Army during the first world war.

MR. GANS: Second, you mean.

THE WITNESS: Second.

Q You and your family, Mr. Dutchen, have been Bronx

residents all your lives?

A All our lives.

Q And you are very familiar with the Third Avenue and East 149th Street district?

A Yes.

Q When did you first become associated with--if that is the fact--Mutual Credit Union?

A Well, when I came--I would say--God, let me see now--

Q About.

A They used our office--they needed a place, so they used our place when we were on 149th Street about 20 years ago, 18, 20 years ago.

Q Have you at any time since 1950 been a shareholder in Mutual Credit Union?

A Oh, yes.

Q Have you at any time been an officer there?

A Yes.

Q You have?

A Yes.

Q When did you become an officer?

A I was first on the credit committee and then about six or seven years ago, eight years ago, I was made a director.

Q Do you have an office, like secretary or treasurer?

A Yes.

Q But you have been a director?

A Yes.

Q Has that been continuous?

A Yes, it has been sort of like automatically renewed.

Q Are you a substantial shareholder there?

A No. My value, I guess, it's somewhere between six and $700.

Q But are you in constant attendance at the Wednesday night meetings?

A No.

Q No?

A I have never been.

Q But you have always been on the loan committee?

A Yes. At that time I used to attend frequently when I was on the credit committee.

Q Can you fix that time?

A Yes. About, oh my God, I would say about 1958, somewheres around there.

Q Until when?

A Oh, well, I think I must have come off it about 1962, somewheres around there, about four or five years.

Q So during the time that Frank Mazzochi, Jr., was active with the Mutual Credit Union, were you in attendance at the meetings regularly?

A No.

Q And they met once a week, on Wednesday night?

A They met and when they need me, they call me.

Q But are you familiar with the size and scope of the financial transactions which involve the Mutual Credit Union?

A Do you mean the individual transactions?

Q No.

A On the whole, yes.

Q On the whole, yes?

A Yes, I have an idea.

Q Is it a big organization?

A No. It is rather small. We probably do about--well, it depends, anywheres from 120 to $150,000 a year in loans, gross.

Q Do you hold an office now?

A Yes. I am still a director.

Q You are still a director?

A Yes.

Q In other words, from 1965 until now you have served continuously as a director?

A Yes.

Q And you attend the directors' meetings, of course?

A Yes, when they are called.

Q Now, tell me, did you ever meet Frank Mazzochi, Jr.?

A Yes.

Q When? You can give me an approximate date.

A I met him, I think it was when we moved the Credit Union to 181st Street and Grand Concourse. I may have met him before, but my recollection is that I met him when we moved, which was about eight years ago

Q About eight years ago?

A Yes.

Q Did you ever meet the parents of Frank Mazzochi, Jr.?

A No, never.

Q You never saw them?

A Never.

Q Did you ever meet any of the brothers of Frank Mazzochi, Jr.?

A I may have. I don't remember, but I may have, because, you know, at the open meeting every year, anybody was invited who was a member. Now, I may have met ~~him~~ Ken, but I don't think so. I don't think I was introduced to

Rim.

Q You are in the general insurance business, aren't you?

A Yes.

Q And you also write life insurance?

A Right.

Q Have you ever written any general insurance for Frank Mazzochi, Jr.?

A Yes.

Q When was that?

A Oh, about 1965, 1966.

Q What kind of insurance did you write?

A Just his automobile.

Q Oh, his automobile?

A Yes.

Q Do you remember what kind of automobile he owned then?

A It was an old car, maybe it was a Pontiac. I don't remember exactly. I have it in the office, but it was an old car at the time.

Q How old would you say?

A Oh, at the time it must have been four or five years old, anyway, at least.

Q So that when you wrote this policy for Frank

Mazzochi, it covered an old car in the two or $3,000 range?

A At that time it might have been, yes.

Q But it was an old car, you say?

A Oh, but it wasn't worth more than a few hundred dollars.

Q Oh, just a few hundred dollars?

A Because it was old at the time.

Q Did you ever see the car?

A I don't think so.

Q Did you write any other insurance for Frank Mazzochi, Jr.?

A I don't recall, but I don't think so.

Q Did you write any insurance for his parents?

A No.

Q Or his brothers?

A No.

Q Never?

A Never.

Q Tell me, did you ever bring Frank Mazzochi, Jr. to the Royal National Bank?

A Yes.

Q You did. When was that?

A When he became president.

Q That would be about February of 1965?

A Well, it would be somewheres around there because our meetings are usually held in January, our annual meetings, so it would probably be some time in February.

Q Do you remember the occasion?

A Oh, yes. Because he, as president, his name appeared on the bank checks, you know, and we used to borrow anywheres from, oh, five to 10,000 for the Credit Union, of which the president had to sign the checks.

So I told Frank, I told Larry Rothberg--they asked me to introduce him to the officers of the bank so they would know who he is when he came in with the check.

I said, "Fine, meet me at the office, I will take you down and I will introduce you."

I don't remember who I introduced him to, but I introduced him to the bank. I might have introduced him to Harold Orens. I don't know if I did or not--he is dead now--he might have been the one because I was more friendly with him than other officers, because he was my brother's patient.

I introduced him to the bank saying he is Frank Mazzochi, he is the new president, and that's it. That was the extent of the introduction.

Q Do you recall around the period of February 1965, around the time when Mazzochi, Frank Mazzochi, Jr. was

tion or the dialogue between you and Frank, Jr. and the bank official?

A No. It was just general stuff that Frank is the new president and, you know, that you will probably be seeing more of him because he will be signing the checks and coming in to make the loans and so on and so forth. It was just general stuff.

Q Was there any talk at that time which concerned any investment that Frank Mazzochi, Jr. may have made to the Mutual Credit Union?

A No.

Q Was there any talk at the time you brought Frank Mazzochi into the bank around February 1965 to the effect that Frank Mazzochi, Jr. had invested $30,000 in the Mutual Credit Union?

A He couldn't have, because our by-laws say--

Q But was there any such talk?

A No.

Q You say he couldn't have done that?

A No.

Q Why not?

A Because according to our rules, the maximum allowed would be--I am not certain now, percentage wise, but we are allowed about five per cent of the value of the

gross value of the assets.

Q That's right.

A And not to exceed, I don't know, now I think it's 10,000, but I think at that time it was something like four or 5,000.

Q I see, yes.

A Now, the law may have been different years ago. Now it's up to 10,000, but at that time it was maybe three or four or 5,000.

Q Well, are you pretty sure that you never heard any such conversation either by Frank Mazzochi or by the bank official?

A Never.

MR. BAJO: Mr. Dutchen refers to by-laws. Is that a by-law of Mutual Credit Union?

THE WITNESS: It's the Banking Department's law for credit unions.

MR. GANS: I think he means Section 454 of the New York City banking law which has prescribed, it's been amended since, varying limits which people can buy shares in these credit unions.

MR. BAJO: That's all I wanted to find out, if it was a regulation or something of the Credit Union's.

A Definitely.

Q Now, tell me, did you, at any time, ever have any knowledge as to the financial status or wealth of Frank Mazzochi's family, which would include his parents?

A Never.

Q Did you ever make any statement to any bank officer or bank employee-- and I am referring to the Royal National Bank in the Bronx on East 149th Street--to the effect that Frank Mazzochi had very wealthy parents?

MR. BAJO: Is this in February of 19--

MR. KOMOROFF: I said at any time.

A Never.

Q Did you ever have any knowledge about the wealth or the extent of the wealth of Frank Mazzochi's parents?

A I never met them. I didn't have anything to do with them. I have no idea.

Q Did you ever have any such conversation with Edward McGraw of the Royal National Bank at any time--

A Never.

Q (continuing) - as to the extent of the wealth of Frank Mazzochi's parents?

A Never.

Q So that is it a fact that you never had any such discussion with Edward McGraw?

A Never.

Q Mr. McGraw has testified in this action that in September 1966--

MR. BAJO: May I have the page of that?

MR. KOMOROFF: Page 123 of the McGraw testimony where he states that he spoke to you in September of 1966 and at that time he asked Arnold Dutchen what he knew about Frank Mazzochi and that you, Arnold Dutchen, told him that he came from a wealthy family and that Frank Mazzochi, Jr. had put in $30,000 into the Credit Union as an investment.

THE WITNESS: Never.

Q Did you ever have such a conversation with Mr. McGraw?

A Never. Can I ask a question?

Q Yes.

A When did Mr. McGraw say this? What year was that?

Q I will tell you when. That statement was made under oath in this courthouse on October 27, 1969.

A Why wasn't I--can I just speak?

Q Sure. You talk.

A When I went to lunch with this gentleman and one other fellow, which was, I am sure, prior to the time that

McGraw made this statement or after, I don't remember now--

MR. BAJO: It was prior to the time of Mr. McGraw's deposition.

A And I told them what had transpired, what I knew, what I remembered. Well, when McGraw had made this statement, why didn't they inform me as to what he had said because this is in direct contradiction to what I had said?

Why didn't they come and say well, Mr. McGraw had said this and you didn't even mention it? It's like this is just sprung on me. I didn't hear this before.

Q Let me get this straight. You say that you met Mr. Bajo prior to today?

A Yes.

Q When was this?

MR. BAJO: In 1969.

MR. KOMOROFF: When?

MR. BAJO: Approximately around the time we were taking the depositions of Mrs. Moscatello.

MR. KOMOROFF: Oh, I see, that would be in the fall of 1969.

MR. BAJO: I believe it was.

THE WITNESS: It could have been, yes.

MR. KOMOROFF: When, Mr. Bajo? When I was conducting the examinations up at the bank?

MR. BAJO: That's when we were up there, yes.

BY MR. KOMOROFF:

Q And you met Mr. Hart and Mr. Bajo?

MR. BAJO: Yes, he did.

Q Can you give us the conversation that you had with Mr. Hart and Mr. Bajo?

A It was just the general questions, you know, what I knew about Mazzochi, which is what I stated here. I knew him, but I didn't know him intimately. We weren't that good friends. The only time I ever saw him was at the meetings and as I said before, I didn't attend very often because I may attend a meeting once in two months and I told him everything I knew, but when I hear about Mr. McGraw shortly after that making this statement, why didn't they question me about it at that time?

I knew they didn't expect him to die or they didn't know when he was going to die, but the fact remains that there is a statement in there that when they questioned me I never mentioned it because I never knew about it that I had said this to Mr. McGraw.

Q Well, I learn now that you had a meeting with Mr. Bajo and Mr. Hart in the fall of 1969. Where was this meeting?

am I correct in stating that the most that Frank Mazzochi, Jr. could have purchased of shares in the Mutual Credit Union around 1966 would have been tops around four or $5,000?

A Very tops.

Q Very tops?

A I think about that time it might have been even three, but I am not even sure.

Q You mean 3,000?

A Yes, 3,000.

Q Now, tell me, did you ever make an investigation of Frank Mazzochi, Jr.'s assets or the assets of Frank Mazzochi, Jr.'s parents or family?

A I had no reason to.

Q So you have absolutely no knowledge about the wealth of Frank Mazzochi, Jr. or of his family--

A No, sir.

Q (continuing) --up to this date?

A Up to this date, right.

Q Now, tell me, did you have any talks with any other official or employee of the Royal National Bank, of the 149th Street branch, in 1965 or 1966 concerning the assets of either Frank Mazzochi, Jr. or his family or of any investments through the purchase of shares that they

shares?

A That's right.

Q Was he permitted to borrow an amount exceeding--

A Oh, yes.

Q (continuing) - the amount of the shares that he bought?

A Yes. I think the ratio--again, I don't want to be held to the exact amount, but I think the ratio is this: if you put in a hundred dollars, you can borrow about $500. In other words, a five to one ratio. In other words, if you are a member, a hundred dollars may either give you up to 500 or $1,000.

Depending on how much you borrow, you may need a co-maker. If you stay within a certain range, you don't need a co-maker.

Q Well, did you have any knowledge in August or September of 1966 as to the true extent of Frank Mazzochi, Jr.'s borrowings as against the shares that he owned?

A No. I think that's handled primarily by the credit committee.

Q Am I correct in stating then that during the years of 1965 and 1966, at no time did you make any statements to anyone tied up with the Royal National Bank which would give them the idea that Frank Mazzochi, Jr. himself

Q So that they can create an income for themselves?

A That's right. Our income is never very great there.

Q Is this a small operation?

A I don't think--in the best days--well, I am not talking about when the old timers had it, because it is over 50 years old, but I would say the years that I was there I don't think it ever made more than 12, 15,000 gross.

Q You mean tops?

A Yes. It was more or less to help the community, and help people who needed it.

Q But is it the primary function of the Mutual Credit Union to help local people in the community?

A Yes, to serve community people. If they recommend anybody, we will take them.

Q Isn't it usual--

MR. BAJO: I object to the question.

Q Is it abnormal for people outside of the local Bronx area to come into the Mutual Credit Union and buy shares?

A No.

Q Tell me, when did you meet Edward McGraw for the first time, do you remember?

A Oh. I think I met Edward McGraw when the bank

first came to 149th Street. I know him that long. I would say it goes back, I don't remember exactly when the bank opened, but they must be at 149th Street 18 years or so.

Q Was he like a friend of yours, McGraw?

A I know everyone in that bank, all the officers and everybody else. They are all like friends of mine because I bank with them so many years. It's like a home town bank to us. All my accounts were there at the time because I used to be in the real estate business.

Q You still bank at the Royal National Bank?

A Yes.

Q Well, now, on page 125 of Mr. McGraw's testimony, the question asked of Mr. McGraw was:

"Q What was your understanding of what Mr. Dutchen said?"

Mr. McGraw said:

"A He had invested $30,000 in the Credit Union."

Now, would you say now that Mr. McGraw was mistaken in making such a statement?

MR. BAJO: He was mistaken?

Q Would you say now that Mr. McGraw was mistaken in making such a remark?

A Yes, because I never knew how much anybody had

invested in it because that wasn't my primary responsibility. I never knew--I have friends in there, personal friends, who I don't know how much money they have in there even.

Q You mean in the Mutual Credit Union?

A Yes. I don't--the only way I would know that would be to check every account and that's not my function.

Q Did you ever go out socially with Mr. McGraw?

A Never.

Q Just that you knew him through your visits to the bank?

A Oh, yes, sure. I used to go to the bank every day, practically.

MR. KOMOROFF: Mr. Bajo, I am through. Do you want to ask some questions?

MR. BAJO: I just want to ask one or two.

EXAMINATION BY MR. BAJO:

Q When did Mr. Mazzochi, Frank Mazzochi, Jr. become president of Mutual Credit Union?

A I don't remember the year, but I would say somewheres about '65 or '66, some place around there. That would have to be in January because our meetings were held in January. It was somewheres around there.

Q You have just testified that you didn't know over the course of time what either Mr. Mazzochi or his

family had invested in the Credit Union.

A Well, I knew that Frank had invested. I would have no knowledge if he brought any other people, unless I was on the credit committee, because on the credit committee, I had to review every loan that was made. Not being on the credit committee it didn't mean anything to me, actually.

Q Did any members of the credit committee, during this period from say '55 to '56, mention to you--

A '55?

Q (continuing) --'65 or '66, mention to you that Frank Mazzochi, Jr. had brought in a substantial amount of business?

A They said he brought in accounts, but we all did. That was our purpose, to get friends and relatives to buy shares and borrow money, yes. But as to the amount, I don't know.

Q Was there ever talk in the Credit Union that Frank Mazzochi, Jr. had brought in substantial business?

MR. KOMOROFF: I object to the form of that question because--

A I would say that he was more active than anybody else, that's about all.

Q Mr. D'Agostino, his deposition was taken this

Tuesday and he said when he was in the Credit Union in '65 and '66 it was common knowledge that Frank Mazzochi, Jr. had brought in substantial business.

A Yes, he brought in more than anybody else, but I don't know how much.

Q Would you say that the Credit Union prospered while Mr. Mazzochi was president, as opposed to previous years?

A We had our ups and downs while he was there. We prospered and then it went back. As a matter of fact, when Frank lets us--Don't hold me to this, but I think it is three years we haven't paid dividends.

Q Did you always pay dividends while Frank was president?

A Yes and no. If we had a good year, we paid and then for years we hadn't paid prior to that time so we had a couple of good years and they permitted us to pay.

Now, even though we did have a few good years, the Banking Department is not permitting us to pay again.

Q During this period of '65 and '66, you said that you had, on numerous occasions, visited the bank on your own business.

A Every day, practically.

Q And you were very friendly with the various

officers, they had no concern with the Mutual Credit Union outside of the fact that we deposited money there and we borrowed occasionally X-amount of dollars from them, but other than that they had no real interest in us, because we were pebbles on the beach, we were nothing.

We borrowed maybe 5,000 or 10,000 two times a year or something like that, you know, so we were no big account.

MR. BAJO: No further questions.

BY MR. KOMOROFF:

Q Mr. Dutchen, was there any talk in the year of 1965,and from that point on, that Frank Mazzochi, Jr. had purchased shares for himself where he was using the names of members of his family?

A That I wouldn't know.

Q But do you know if shares had been purchased in the names of other members of his family?

A No.

Q You knew nothing about that?

A No, nothing about that.

Q Do you know anything about that now?

A Oh, I have heard a lot of things and I still don't know what the story is, but at that time, I had no knowledge of how much he had invested or in whose names

all objections, except as to form, are reserved to the time of trial.

IT IS FURTHER STIPULATED AND AGREED that counsel for plaintiff shall furnish a copy of the within deposition to counsel for defendants, without cost.

oOo

P E T E R W A L T E R, called as a witness by plaintiff, being first duly sworn by the Notary Public (Richard Kaufman) and stating his residence as 3133 Sands Place, Bronx, New York, testified as follows:

EXAMINATION BY MR. KOMOROFF:

Q Mr. Walter, what is your title with the bank?

A Cashier.

Q Head cashier?

A Cashier.

Q I mean is there anybody in the Cashier's Department above you?

A No.

Q How long have you been with the bank?

A Fifteen years.

Q How did you start with the bank?

A As a note teller.

Q Did you study banking at the American Institute?

A Yes.

Q Where, at the Woolworth Building?

A Yes.

Q What years, do you remember?

A Not offhand.

Q Was Mr. Farley one of your teachers?

A I couldn't tell you.

Q Did you study securities and the transfer of securities and the handling of securities?

A No, sir.

Q Are you familiar with the handling of securities?

A Fairly.

Q Do you know what a stock certificate looks like?

A Yes.

Q Do you know what a treasury bill looks like?

A Yes.

Q Do you know what a United States Government bond looks like?

A Yes.

Q Do you know what a United States Treasury note looks like?

A Yes.

Q Do you know what a certificate of purchase looks like, bill of sale?

A Yes.

Q Do you know what a confirmation of purchase looks like?

A Yes.

Q Have you been familiar with documents like that for a long time?

A For a period of time.

Q More than ten years?

A Yes.

Q Do you know what a billing from a stockbrokerage house or bank looks like as it involves securities?

A Yes.

Q You are familiar with all those?

A Right.

Q Were you ever in the Trust Department of this bank?

A I was appointed trust officer of the bank.

Q You still are a trust officer of the bank?

A No, not this year.

Q For how long did you serve as trust officer?

A I believe a year and a half.

Q Can you fix the time, please?

A Probably late 1967 and 1968.

Q As a trust officer, was it part of your function to handle securities?

A No, sir. We didn't have that type of account.

Q What were your duties on behalf of the bank in 1966?

A Cashier.

Q Where, at this place?

A At this office.

Q What were your duties in 1967?

A I was cashier.

Q Here?

A Yes, sir.

Q Did you ever meet Frank Maass?

A No, sir.

Q You don't know him at all?

A No, sir.

Q Never seen him?

A No, sir.

Q When did you hear about him for the first time?

A Some time, I believe, in September of 1966.

Q Through whom?

A By a phone call from Mr. McGraw.

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Q Is that the gentleman who was an officer at the East 149th Street Branch?

A Yes.

Q What did Mr. McGraw say to you at the time?

A He discussed an item being put into suspense.

Q Tell us about it, please.

A Just that he was crediting the proceeds of the sale of these securities into suspense.

Q Which securities?

A Certain securities.

Q Involving which bank customer?

A I believe it was Mazzochi.

Q Frank Mazzochi?

A Yes.

Q What was the conversation, the substance of it between you and Mr. McGraw on that occasion?

A I really don't recall.

Q Was a record made of it?

A No.

Q Do you have a record on Frank Mazzochi at thi bank?

A No.

Q How do you remember that?

A I have a copy of a memo that he wrote to me t

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following date.

Q Do you have it here?

A No. It's in the room here.

MR. KOMOROFF: May I see that memo?

MR. HART: It is the same as Exhibit SS to the interrogatories.

MR. KOMOROFF: Do you have the original?

MR. HART: We have a carbon copy.

MR. KOMOROFF: Would you mark this carbon copy of a memorandum dated September 15, 1966 to Peter Walter, cashier, from Edward I. McGraw, assistant vice president, re Frank Mazzochi as Plaintiff's Exhibit 46 for identification?

(Carbon copy of memorandum date September 15, 1966, to Peter Walter, cashier, from Edward I. McGraw, assistant vice presiden re Frank Mazzochi, marked Plain tiff's Exhibit 46 for identific tion as of this date.)

BY MR. KOMOROFF:

Q Mr. Walter, you saw this memorandum for the first time probably September 16, 1966?

A That's very possible it was the 15th because we had messengers coming down here periodically during the day. I couldn't say whether I saw it the 15th o the 16th for the first time.

told me he is putting the money in suspense.

Q Would it be normal for you to make a memo of such a talk that you had with Mr. McGraw?

A No.

Q Do you remember if Mr. McGraw discussed with you in any way the release of the proceeds of $140,000 to Mazzochi in August of 1966? And I am referring to the first sentence in the second paragraph of this memo.

Was there any such talk between you and McGraw?

MR. HART: For the time being, as far as I can tell, the only conversation we have identified between Mr. McGraw and Mr. Walter was the conversation on the 14th of September 1966 preceding the sending of that memorandum.

Are you directing your question to that conversation or are you asking if there was any othe conversation?

I would like that to be clear.

MR. KOMOROFF: I think he answered about the 14th, but after he got this memorandum, I want to know if he discussed the matter of the release of the proceeds of $140,000.

Q Did you speak to McGraw about it on the telephc

or any other bank employee?

A Possibly. It is possible. I am not saying I didn't; I am not saying I did.

MR. BLEIWAS: Are you saying you don't remember?

THE WITNESS: I don't remember speaking to him after this.

Q Did you talk to any other bank employee after you got this memo?

A No, I don't believe I did. I only recall my conversation with Mr. McGraw with reference to putting it in.

Q You mean the main thrust of the talk was just creating a suspense account?

A We are not creating a suspense account. We have a suspense account where we put these items in.

Q I am not a banker. Maybe I use the wrong terms.

I mean freezing the funds for a while, isn't that really what happened?

A We held the funds, yes.

Q Did he tell you why he had put the moneys into the suspense account?

A I don't recall if he mentioned why.

bond is a long term.

Q And these are coupon bonds with little coupons attached?

A Yes, they pay semi-annually.

Q What was said by the two of you, not the exact words?

A I am only assuming what he could ask me or wha went on. I don't know for sure.

He probably asked me if I had any flyers on bonds or notes or anything like that, and I told him no, and I checked.

Q You checked?

A Yes.

Q You checked about what?

A To see if there was any items reported stolen

Q Where did you check?

A With the Federal Bureau of Investigation and the U. S. Treasury.

Q Do you have a memo to show what you did at the time?

A I have a photostat of a memo with a notation that I made of where I called.

Q When did you make that memo?

A I assume it would be the 15th.

Q You mean the same day?

A Yes.

Q You mean you just dialed the FBI?

A Yes.

Q Did you dial anybody else?

A I believe it was the Treasury. Maybe the Secret Service or something like that.

Q Who did you dial?

A The Federal Bureau of Investigation.

Q You just said "or the Treasury."

A I dialed both.

Q And you said something about the Secret Service.

A I advised them I have a sale of these bonds, that we are holding up the proceeds. Do they have any report they are stolen.

Q I know, but I want you to tell me the number that you dialed, the department that you got in contact with and who you spoke with and what they told you and what you told them.

A I cannot tell you the telephone number. I do not know it by memory.

Q Where did you get the number?

A From the Manhattan Telephone book. Actually,

Plaintiff's Exhibits 47A, 47B and 47C, respectively, for identification as of this date.)

BY MR. KOMOROFF:

Q Mr. Walter, you have just had an instrument brought up which has been deposited on the table in front of you.

What is that?

A It is the Wheeldex I referred to with the telephone numbers.

Q You have Exhibit 46, about September 15th?

A Approximately.

Q What did you do after you got this memorandum?

A I called the Federal Bureau of Investigation.

Q Who else?

A It was either the U. S. Treasury or Secret Service in New York here.

Q Do you have the telephone number of the FBI in that Wheeldex?

A Yes.

Q Was it in there on September 15, 1966?

A I presume so.

Q Please locate the card.

A Here it is (indicating).

MR. BLEIWAS: Could we have him read of

what is on the card?

THE WITNESS: It says "FBI 535-7700," and it has names "Charles Thomas, Arthur Nehrbaus." Th it has "Goss" and on the right side it has "201 Eas 69th Street." And underneath in pencil it has "Mr. O'Connor, Extension 249."

MR. KOMOROFF: I would like to mark for identification that card.

(Wheeldex card reading in part "FBI 535-7700...," marked Plaintiff's Exhibit 48 for identification as of this date.)

BY MR. KOMOROFF:

Q This Wheeldex, is that on your desk or some other desk downstairs?

A On my secretary's.

Q Who was your secretary at that time?

A Pauline Giambalvo.

Q Is she still with the bank?

A Yes.

Q Do you remember, with clarity, the call that you made to the FBI?

A Fairly well, yes.

Q Did you dial the number yourself?

A Yes.

Q And Mrs. Giambalvo didn't do it?

A No.

Q You dialed it yourself?

A Yes.

Q Who did you speak to over there?

A I don't recall who I spoke to over there. I asked them about the bonds and if they had a report that they were stolen, and they said they would call back and I never got a call back.

Q Did you give them the numbers of the bonds?

A Yes.

Q Where did you get the numbers from?

A I am sorry. I don't recall giving them the numbers. I gave them the series, when they were due and when they were dated.

Q Where did you get that information from?

A I may have called Mr. McGraw and asked Mr. McGraw for it.

Q Take a look at Plaintiff's Exhibit 46. Do you have the serial numbers on that memo?

You said a minute ago you called up the FBI because you got this memorandum.

MR. HART: Would you pass Exhibits 47A, B and C?

office?

A These are in the general floor. I have a private office downstairs, but the files are in another office.

Q You said before you didn't know who at the FBI you spoke to.

MR. HART: I believe there was a questi pending to Mr. Walter.

A No, I did not know who I spoke to at the FBI.

MR. HART: When Mr. Walter asked for this copy of the memorandum, you asked him how he knew the nature of the notes, and he then asked for this memorandum.

Q You may answer it. I will adopt the question Mr. Hart has stated.

A In looking at Exhibit 47C, on there is a notation of the issue date of the bonds, the rate of interes and the due date.

Q Are the serial numbers there?

A No.

Q In other words, no serial numbers were given to the FBI?

A No, sir.

Q Were the serial numbers given to the United

States Secret Service?

A No, sir.

Q Were the serial numbers of these Treasury notes given to the United States Treasury?

A When I refreshed my memory here, I see I did not call the Treasury; I called the Secret Service and spoke to a Mr. Maura.

Q That is the United States Secret Service?

A Right.

Q Did you give Mr. Maura the serial numbers of these Treasury notes, Series A1970?

A No, sir.

Q Mr. Walter, am I correct, then, in assuming from what you have told us that you made two separate inquiries, one with the FBI and one with the United States Secret Service?

A Yes.

Q Did you make any more inquiries beyond that?

A No, sir.

Q Am I also correct in assuming that to neither the FBI or the United States Secret Service did you stat the serial numbers of these different bonds?

A I don't believe so.

Q Did you ask, after you got this memo from Mr.

McGraw, that he should give to you the denominations of the Treasury notes, Series A1970, and the serial numbers?

A I don't recall.

MR. MARKOWITZ: Referring to Exhibit 46 Mr. Reporter.

MR. HART: 47.

MR. MARKOWITZ: He was referring to 46.

MR. HART: I am sorry.

BY MR. KOMOROFF:

Q Do you have--

MR. HART: The witness is looking at Exhibit RR to the answers to interrogatories.

Q Mr. Walter, you say you called the United States Secret Service?

A Yes, sir.

Q Was that after you called the FBI or before?

A I don't remember.

Q But you did call them at about that time?

A About the same time.

Q Where did you get the telephone of the United States Secret Service?

A Probably the Manhattan Telephone directory.

Q You didn't go to your Wheeldex for that?

A No.

Q You looked up the number and did you dial?

A Yes.

Q In looking up the number, under what heading did you look it up?

A Secret Service, U. S. Government Secret Servic

Q United States Government Secret Service?

A Yes.

Q You are quite sure that is where you got the number?

A Pretty sure.

Q Do you have any idea what the number is?

A 264-7204.

MR. BLEIWAS: Let the record note the witness is reading from the memorandum which has been marked 47C.

Q Tell me, did you call up the Federal Reserve Bank also at that time to check?

A No.

Q Did Mr. McGraw tell you to call up the Federal Reserve Bank?

A No, sir.

Q Or did Mr. Stolz tell you to do that?

A No, not to my knowledge.

Q So, the only two places where you made inquiry were the FBI and the United States Secret Service?

A Yes.

Q Let's go back to the FBI.

Did you get any response from the FBI on this inquiry that you made?

A I don't believe so.

Q They never called you back?

A No.

Q You got no response?

A No.

Q Did you follow this up in any way?

A I may have followed it up with a call. I don't remember.

Q You have no writings to support what you are telling us now?

A No.

Q Is there any place you can go to refresh your recollection as to what you did in inquiring as to whether or not these Treasury notes were stolen?

A Just this memoranda.

Q Where are the others of these memoranda; are they among the lost documents?

A Yes.

facets of this case?

A Only what I reported to him or what Mr. McGraw has reported to him or what has been reported to him.

Q But he wasn't in on the events as they happened in the original state?

A Not to my knowledge.

Q Is there anything you want to tell us now that will elaborate further on what happened when you called the FBI?

A No, I don't know of anything else that happene

Q You say that you also called the United States Secret Service and spoke to a man named Maura.

A That is the name I have here.

Q Did you call Mr. Maura at or about the same ti around September 15th?

A Approximately the same time.

Q Do you recall the conversation you had with Mr. Maura?

A Not verbatim, but I asked him if he had anything on this and gave him the type of bonds or notes they were and I believe it was Mr. Maura that advised me there is no list of them being reported stolen or missin and in further conversations I found that no lists were

kept or reported stolen in the New York area.

Q Where is the Secret Service located, do you know?

A Not offhand.

Q You have the telephone number here, 264-7204. Are they downtown or midtown?

A I don't know, sir.

Q I think you gave us the address of the FBI as being midtown on East 69th Street.

Do you know where the Secret Service is locate

MR. HART: I don't believe that the witness gave you the address for the FBI. I belie the address for the FBI was on his telephone index card.

MR. KOMOROFF: The index card is the source, then, of my idea. I knew it was in the re some place.

BY MR. KOMOROFF:

Q Where is the United States Secret Service?

A I don't know.

Q Tell me, how long did you talk to Mr. Maura?

A I don't recall the length of time.

Q Was it two minutes, three minutes?

A I don't recall.

A Yes.

Q That is a substantial amount, isn't it?

A Yes.

Q And you were making an important inquiry, weren't you, at the request of a bank officer?

A No, not at the request of a bank officer.

Q Wasn't McGraw a vice president or assistant vice president?

A Yes.

Q This was an important inquiry you were making?

A This was referred to me and I said I would check with the Federal Bureau of Investigation. Nobody directed me to do it. It's part of my job to do it.

Q To make a thorough check?

A Just on what I did. Other people had already checked, but I handled the FBI and the Secret Service.

Q How did you know other people had checked?

A I believe I was told they contacted Federal Reserve.

Q Told by whom?

A Maybe Mr. McGraw. I am not sure.

Q Was Federal Reserve contacted?

A I didn't check.

Q How do you know they were contacted?

Q Was he based at this bank at that time?

A No, he was in his own office.

Q You called Mr. Stolz?

A Yes, Oxford 7-3980.

Q Was that his number three years ago when you worked on this?

A I believe so.

Q What did Mr. Stolz tell you?

MR. HART: At what time? Let's fix the conversation and date.

MR. BLEIWAS: Since he called Mr. Stolz let's find out what he said to Mr. Stolz first.

MR. KOMOROFF: I thought I was asking him that.

MR. BLEIWAS: You asked him what Stolz said.

BY MR. KOMOROFF:

Q What did you say to Mr. Stolz when you called

A I informed him what I found out from the Federal Bureau of Investigation and from the Secret Service.

MR. BLEIWAS: What did you tell him with respect to the Secret Service?

THE WITNESS: That there was no report made of these securities being missing and they hav

no record, or something to that effect.

BY MR. KOMOROFF:

Q That is a little confusing to me. You say they had no report of the securities being missing?

A No, sir.

Q Which securities?

A The securities that are in question here. The ones that are identified here or whatever it is that is reported stolen.

MR. MARKOWITZ: Referring to 47A, B and C.

Q You mean the information that you had is on 47A, B and C; is that correct?

A Right.

Q These were in front of you when you were dealing with the FBI and the Secret Service?

A Yes, sir.

Q Were any other papers in front of you when you were dealing with the FBI and the Secret Service?

A I don't recall.

Q Did the FBI and the Secret Service say that they had no listings?

A I don't believe the FBI said that. I believe it was the Secret Service that said that.

Q They had no listing?

A No listing of these being reported missing.

Q They had no listing of any Series A1970 notes being reported missing?

A No, sir.

Q Did you make any personal visits to the FBI or to the United States Secret Service in furtherance of this inquiry?

A No, sir.

Q Did you report this back to Mr. McGraw?

A Report what, sir?

Q The results of your inquiry at the FBI and the United States Secret Service, did you get in touch with Mr. McGraw and report that to him?

A Probably did, sir. I may have.

Q Did you or didn't you?

A I don't recall.

Q You didn't make any record of that?

A No.

Q Do you remember Mr. McGraw's response?

MR. HART: Response to what?

MR.KOMOROFF: To his report to Mr. McGraw.

MR. HART: The witness just said he

doesn't remember whether he made a report to Mr. McGraw.

THE WITNESS: I may have, but I don't remember.

BY MR. KOMOROFF:

Q Did you send a memo to Mr. McGraw?

A No.

Q Or to any other bank officer?

A No.

Q Did you send a written memo to Mr. Stolz?

A No, sir, not to my knowledge.

Q Just on the telephone?

A Just on the telephone.

Q Have you told us the full conversation that y had with Mr. Stolz?

A To the best of my knowledge.

Q Was there only one talk or was there more?

A I couldn't recall, sir.

Q Is there something that has been left out that you would like to tell us now with respect to the talk you had with Mr. Stolz or have you told us everything that happened?

A I believe I have told you everything.

Q Mr. Walter, please tell us what Mr. Stolz'

wrong--that your bank has certain procedures that you follow in a situation of this type; is that correct?

A More or less.

Q This is not the first time that you had occasion to call the FBI?

A No, sir.

Q Or even the Secret Service?

A That was about the first time I spoke with the Secret Service. We have a Secret Serviceman that would come in here and investigate us.

Q Did you ever become involved, prior to this time, with making an inquiry as to the right of one of your customers to sell a Treasury note or other security

A No, sir.

Q Do you know of any other time when the bank had occasion to make such inquiry, where you were not involv

A No, sir.

MR. MARKOWITZ: I would suggest you include in your question, Mr. Bleiwas, an inquiry with respect to any securities that may have been stolen

MR. BLEIWAS: I intended to include it broadly, including anything that may have been stolen.

Q For any reason to make an inquiry?

A No, sir.

Q You said before that it was your job to call the FBI. That was your phrase.

A Yes.

Q When you say it was your job, was this part of your formal duties as a cashier or was this agreed upon more or less between you and Mr. McGraw and Mr. Stolz for this situation?

In other words--

A No. My normal job is any unusual shortage of cash or mysterious disappearance or defalcation, I am the one that reports it to the FBI and that is why I refer to it as my job.

Q When you say that, you mean an internal operation?

A Yes.

Q Would you agree this was something other than an internal operation?

A At this point, at the point of inquiry, it wa internal. We were trying to check these out. They assumed probably I was the contact officer, that I should check with the FBI.

Q When you say "they assumed"--

A They probably asked me.

Q (continuing) --you mean Mr. McGraw or Mr. Stolz?

A Mr. Stolz could have asked me.

Q How about Mr. Hoffman, did he get involved at any time?

A I don't believe so.

Q Did you make any recommendation to Mr. McGraw as to further action, if any, after your inquiry?

A Not that I recall, no.

Q Did you tell Mr. McGraw to release the funds in suspense?

A I may have. I don't know. I may have gotten a phone call that it was okay to release the funds from the attorney.

Q Did Mr. McGraw have authority to release the funds or was that authority in you or some other person?

A I think the authority has to come from our ba attorney after we checked it out.

Q The bank attorney was not employed directly b the bank, is that correct?

A No. He is retained by the bank.

Q Could Mr. McGraw have released the funds with out authorization from you?

A Yes, he could have, yes.

Q In other words, it was not your decision to make?

A No. We may have conferred on it.

Q I understand that.

Could you have overruled his decision under the procedures followed by your bank?

A Possibly.

Q The release of the funds from the suspense account, would that come by written memorandum or would it be merely--

A General ledger debit ticket.

Q Who would prepare that ticket?

A He may have had a girl prepare it and he approved it.

Q I don't mean the physical preparation.

A He had a right to approve it.

Q Then, does it have to come to you?

A No.

MR. MARKOWITZ: When he said "he"--

MR. BLEIWAS: Mr. McGraw.

Q Do these tickets eventually come to your department?

A The next day.

MR. BLEIWAS: Nothing further.

EXAMINATION BY MR. KOMOROFF:

Q Mr. Walter, how long have you been contacting the FBI with respect to the matter of stolen securities or stolen cash?

A Either one?

Q Yes, when you had a reason for calling them up.

A On cash since about 1963 and only one incident on securities.

Q What year was that, if you remember?

A For securities?

Q Yes.

A 1966.

Q You mean the one we have been discussing?

A Yes.

Q Is that the first time you called the FBI--

A On securities.

Q (continuing) --was our case?

A Yes.

Q All the other inquiries were on cash transactions?

A Yes.

Q Do they have different departments that handle

Q What year?

A 1966.

Q What was your title here?

A Assistant manager.

Q Where did you sit outside?

A Up front.

Q You mean way up in front or in the back near Mr. Moscatello?

A Way up in front.

Q Was it part of your job to open accounts?

A Yes.

Q What else did you do here?

A Operations work.

Q What does that mean?

A Taking care of tellers, okay checks, service customers' problems.

Q And service problems of the tellers and employees?

A Yes.

Q Do you know Frank Mazzochi, Jr.?

A Yes.

Q When did you meet him?

A The early part of 1965.

Q Where?

A Here at the bank.

Q Who introduced him to you?

A Three officers or two officers and a secretary of the Credit Union, Mutual Credit Union.

Q Do you know their names?

A Arnold Duchen, Jack Haimowitz and Saul Geltman.

Q Do you remember what was said by these gentlemen to you at the time?

A Well, they brought him into the bank and they introduced me to him. I am very friendly with them. I was very close with the Credit Union. They had a presiden there Mannie Lubow who has since passed away. That was the reason for Mazzochi becoming president, I think, of the Credit Union. The other man was failing at the time and they brought him in and introduced me to him.

Q Did they tell you where they had met Mr. Mazzochi?

A No.

MR. HART: Can we establish the relationship between Mutual Credit Union and the bank so that we have this clear.

MR. KOMOROFF: We will get to that.

Q You say one of the men was Haimowitz?

A Yes.

Q And another man?

A Duchen. Saul Geltman.

Q That was the first time that you met Mr. Mazzochi?

A Yes.

Q Did you have any conversation at that time with Mr. Haimowitz about Mr. Mazzochi, about his background, who he was?

A No.

Q Did you have any conversation at that time with Mr. Duchen about Mr. Mazzochi and his background?

A No, it was just an introduction.

Q Mr. Geltman, did he tell you anything about Mr. Mazzochi's background?

A No.

Q What did these men tell you in substance at the time?

A [illegible]t he would be taking over the presidency of Mutual Credit Union.

Q And that is all?

A They introduced me to him and they were bringing him tothe back here because the Credit Union was handled in the back, it wasn't up front, the account.

The account of Mutual Credit Union was handled

by our credit offices back here.

Q Will you explain that?

A It is a borrowing account. It wouldn't be handled by an operations officer, it would be handled back here.

Q Was a credit file kept on that account?

A On Mutual Credit Union?

Q Yes.

A I assume so.

Q Were any financial statements filed by anybody in connection with the maintenance of that account?

A It would have to be. They were borrowing.

MR. KOMOROFF: I ask that the credit file on the Mutual Credit Union be produced for the entire period the account was maintained at this bank.

MR. HART: I am sure we will have no problem. I believe that Mr. Dellatte, as he testified, was not in charge of the account and had no dealingswith it and we will be producing one of the officers who did handle that account and at that time I am sure he will be able to identify all of the bank's records with respect to that account if they are subject to discovery.

MR. MARKOWITZ: Let the record show he is referring to the responses to plaintiff's interrogatories.

MR. KOMOROFF: Exhibit U of Royal National Bank's responses.

Q Does that refresh your recollection as to when you met Mr. Mazzochi?

A Yes, this is when they brought him in, in the beginning of 1965.

Q Did Mr. Mazzochi come in frequently after that date, after the February 10, 1965 date?

A Yes.

Q And you got to know him better?

A I didn't have anything to do with him, really, because he would be dealing back here with the Credit Union.

Q Who would he be dealing with, do you know?

A Again, one of the officers in the bank. Either Kayner, McGraw.

Q You mentioned Ludlow and Gutstein?

A Ludlow is back there also and Mr. Gutstein.

Q When these men came in, did they tell you what office Mr. Mazzochi was accepting on behalf of Mutual Credit Union?

MR. KOMOROFF: We don't consent to that. That is what you state for the record. We don't see the materiality or relevancy of the records that were marked, because these antedate mainly the date that the witness met Mr. Mazzochi and I think that is the important thing.

(Nine signature cards variously dated, marked Defendant Merrill Lynch Exhibit A for identification, as of this date.)

BY MR. KOMOROFF:

Q Mr. Dellatte, do you know if this Mutual Credit Union account was continued all through the years from its first inception?

A Yes.

Q Weren't there some interruptions at times when the account was not maintained or when the account was closed or interrupted?

A No. We had the account right through from 1951. The various cards just designate different officers.

Q Do you know that of your own knowledge, that the account continued uninterrupted?

A Yes.

Q Do you know of any officers at this branch who new Frank Mazzochi before February 10, 1965 when

Mazzochi signed the signature card which is Exhibit 25?

A No.

Q From your knowledge of the issues in this case,, would you say that the first time that Mazzochi had contact with this bank was February 10, 1965?

A Yes.

Q When he was brought in by these three other men?

A Yes.

Q Tell me, you didn't have much to do with the maintenance or the operation, I should say, of the Mutual Credit Union account after February 10, 1965, that was within the domain of the credit men, is that right?

A Yes.

Q Was this a lending account where the bank was lending money all the time to Mutual Credit?

A Yes.

Q Do you have an idea what the average bank balances were on this account in 1965?

A No.

Q 1966.

A No.

Q Did you print the names on Exhibit 25?

Is this your printing?

A No.

Q Do you know who did?

A No.

Q Were the printings on that card when you signed your name at the bottom?

A Yes. I accepted the card. That is the reason I signed it.

When I accepted the card naturally it would be filled out in full.

Q How did you get the card to accept it?

A Probably one of the officers from Mutual Credit dropped it in.

Q They may have filled it in?

A Yes.

Q Did you do anything to check up on the statements made on the front and back side of the exhibit you are holding?

A Yes. They would have new resolutions and signature cards whenever they change officers.

Q You look at the back of it and they mention Mazzochi and they say he is in the toy business?

A Correct.

Q Did you check on that?

A Did I check whether or not he was in the toy

business?

Q Yes.

A No.

Q You didn't?

A No.

Q Did you ask anybody to do it or was this a function that didn't belong to you but belonged to one of the credit officers?

A Right. It didn't belong to me at all.

MR. HART: Your question assumes that might have been a function of somebody and Mr. Dellatte has not testified to that.

Q Do you know whose function it was to check on the veracity of the material written on the back of the card?

MR. HART: If it was the function of anybody. That is my point.

MR. KOMOROFF: If he knows it was the function of somebody else, let him say.

Q Was it the function of a credit officer to check on the veracity or accuracy of the material?

A Yes, I would say this is the policy of the bank.

Q To do what?

A To check on them.

Q Which officer would check?

A I couldn't say. There are four credit officers there.

Q It was done in the back here?

A Yes. There is a Credit Department, plus the fact he is being brought in by people who have been banking with us for years.

MR. BLEIWAS: That is a reference in itself, you mean?

THE WITNESS: Correct. It is not a walk in off the street. These people have been connected with the bank since 1951, Mutual Credit.

Q Up until the day you met him, had Frank Mazzochi had any personal individual banking experiences with this bank?

A Not that I know of, no.

Q Between that date February 10, 1965 and August 9th of 1966, that would be 19 months, did Frank Mazzochi personally have any banking experiences with this bank?

MR. HART: Would you explain what you mean by personally?

Q Personally Frank Mazzochi, not where he is

tied up with other corporations or companies.

A His own individual account?

Q Yes, sir.

A I would say no up to August of the following year. I would say no.

Q Did you open up that account?

A I opened up an account in August the following year.

Q You opened that account?

A Yes. Excuse me. I opened an account for him, not in his own name, a business account.

Q When?

A August of 1965.

Q I am talking about August of 1966.

A No, '65. Not for his own account. He opened accounts that he was a part of.

In other words, there were three accounts opened which he was either an officer or connected with as a partner, but nothing in his own name.

Q That is the point I am trying to make.

A Nothing in his own name.

Q When did he open an account at this bank in his own name for the first time?

A I don't know.

Q You don't?

A No.

Q In other words, I show you now Exhibit 22 and ask you, Mr. Dellatte, if you had anything to do with the opening of the Frank Mazzochi account at this bank on August 9, 1966, No. 64304165.

A No, I didn't open that.

Q What does that signature card indicate to you?

A That he opened an account August 9, 1966 in his personal name.

Q Do you know as a bank officer whether or not Frank Mazzochi had any personal banking transactions with this bank prior to that date?

A Personal?

Q This is only Frank Mazzochi, Jr.

A You mean under his own name?

Q Yes.

A He couldn't because this account was opened August 9, 1966.

Q Did he have any account at this bank before that date?

A In his personal name?

Q That is all we are talking about.

A No.

bear the name of Frank Mazzochi.

THE WITNESS: I said he had three different accounts but not in his own name.

Q I have only been interrogating you about Frank Mazzochi, Jr.

A Personal account, no.

Q Only personal and only individual and we are all intelligent people in this room and I thought there was no difficulty about that.

Did you ever live in Brooklyn, New York?

A No.

Q Do you know the Williamsburgh neighborhood in Brooklyn?

A Fairly--not too well.

Q Do you know where South Third Street is in Brooklyn?

A I have an idea.

Q Is it a nice neighborhood?

MR. BLEIWAS: I would object to the question. By what standard do we measure?

Q Is it a neighborhood where affluant people live or is it a rundown neighborhood?

MR. BLEIWAS: How would he know that? I object to that.

Goldfine, 382-9824-6?

What does that mean?

A It is the account number. The original account was introduced by Mr. Goldfine.

Q Which Goldfine is that?

A William Goldfine.

Q That is the chairman of the board?

A Yes.

Q He introduced the Mutual Credit Union account here to the bank way back in 1951?

A Correct.

Q Do you know to your knowledge if he has had any contact with the maintenance of this Mutual Credit Union account since that day?

A No, it would be handled by our office here. When Mr. Goldfine went down to the main office, he didn't take it, it is here.

Q Am I correct it is a banking practice to keep files where lending transactions and credit is extended?

A Yes.

Q Do you know if there is such a file or files involving Mutual Credit Union?

A If there is a credit file on Mutual Credit, I would say yes.

To Incorporate, Banking Resolutions and Banking Account Agreement dated January 13, 1967, signed by the secretary of Finnog, Ltd.

(Document entitled Certificate To Incorporate, Banking Resolutions and Banking Account Agreement dated January 13, 1967, signed by the secretary of Finnog, Ltd., marked Plaintiff's Exhibit 42 for identification, as of this date.)

BY MR. KOMOROFF:

Q Mr. Dellatte, we have just had marked the records with respect to the Finnog and Unit Home corporate accounts and a Gilbert which is a partnership account and a Mutual Credit Union which I don't if if it is a corporation or an association account.

Were there any other accounts other than individual that Mazzochi was tied up with from the day you met him in February 1965 until August of 1966?

A That I would know of, no.

Q Did you know of any other accounts that Mr. Mazzochi may have been tied up with at some other bank?

A No.

Q Do you know if the bank keeps average balance cards on each account that is active?

A Yes.

Q That is a banking procedure, right?

A We keep them.

MR. KOMOROFF: I will ask Mr. Hart, for you to obtain and produce the average balance cards kept on each account by Finnog, Unit Home, Gilbert and Mutual Union from February 10, 1965 up until October 1st of 1966. From the dates that the accounts were opened up until the sealing would be October 1, 1966.

MR. HART: Those are the same average balance cards you requested earlier today during Mrs. Moscatello's testimony, is that correct?

MR. KOMOROFF: Yes.

MR. HART: I will check with the bank officers and if those cards are readily available, we will certainly produce them.

MR. KOMOROFF: I would also ask that the loan records with respect to each account be produced for the same period.

MR. HART: With respect to loan records, I don't know what you mean by loan records and witho the testimony of an officer who handled the loan accounts for these corporations, I don't think any

Q Was that 1966?

A I am not sure.

Q Was Mazzochi banking with any other branch of the Royal?

A In what capacity? He would have to bank here.

Q Did he bank here?

A Yes.

Q This was the only branch where these different accounts were maintained?

A Correct.

Q Did Frank Mazzochi come into the bank frequentl; after February 1965?

A Frequently? I saw him quite a few times.

Q Did he make deposits here?

A Yes.

Q Did he make withdrawals?

A That I don't know.

Withdrawals, I believe Credit Union gives a check out when you go in there to borrow. That is the only way moneys would be withdrawn.

Q I don't understand.

A A credit union would issue a check drawn on the Credit Union and that is the only type of withdrawal.

MR. BLEIWAS: They are in the business of lending money?

THE WITNESS: Yes.

MR. BLEIWAS: If they lend money to a third party they issue a check and that check is drawn on your bank and you pay out proceeds?

THE WITNESS: Yes.

Q The proceeds would be paid out to the payee on the check, right?

A Yes.

Q Did Mazzochi come in frequently to the bank in 1965?

A I would say he made deposits pretty regular.

Q Would that be once a week, twice a week?

A I would say twice a week.

Q Then did he come in frequently to the bank in 1966, up until August 1966, the first seven months of the year?

A I would say the same period.

Q Several times a week?

A A couple of times a week.

Q And you would see him from where you were sitting?

A He would have to pass my desk, right.

Q Being tied up with these other accounts that were opened, that would be more reason for him to show hi face frequently on this banking floor?

A Yes.

Q Did you know anything about Frank Mazzochi outside of his connection with these banking accounts?

A I don't understand your question.

Q Did you have any knowledge of Frank Mazzoci outside of the fact that he was related in some way with Finnog, Unit, Gilbert, Mutual Union?

A No.

Q You had no other knowledge about him?

A No.

Q Were you in the habit of conversing with him when he made his entre into the bank floor?

A Good morning, a gesture like that.

Q Did you go beyond that?

A No. We had nothing to talk about, really.

Q So your total knowledge of Frank Mazzochi then in August 1966 was about his connection with these four accounts, am I correct?

A That is correct.

Q You can't add to that, you had no other knowledge of the man?

A No, other than being connected with the four accounts and conducting business with the four accounts.

Q Did you participate as a bank official in any banking transactions that these other accounts had with a bank after the accounts were opened?

Were you personally involved as a bank officia in any sort of transaction with Finnog,Unit, Gilbert?

A What type of transaction?

Q I don't know, whatever might have come up.

A I opened the accounts.

Q I know that, but beyond that.

A You mean whether or not they would come up and ask to borrow money?

Q Whatever it might be.

A No. Just I believe a change of signature once or twice.

Q You said before that part of your duties was bank operations, right?

A Yes.

Q Did you ever get any bad checks that bounced which involved any of these accounts?

A Not that I recall, no.

Q Would you say no to that or would you say you just don't remember?

A I would say I wouldn't know.

Q Tell me, you have seen Exhibit 31 before. I notice that your name appears at the bottom. That is a Unit Home Repair account?

A Right.

Q Do you see the red letters up on top?

A Yes.

Q Did you print that in there?

A No.

Q What does that mean?

MR. HART: You will have to establish the basis for his knowledge, if any, as to what that means.

So far he testified he didn't write it.

MR. MARKOWITZ: Who did write it?

THE WITNESS: I don't know.

Q What department of the bank would write it?

A It could be handled by our Credit Department.

Q But normally, is that their function?

MR. HART: Now we are dealing with a document that is signed by Mr. Dellatte, this is Plaintiff's Exhibit 31. You are referring him to writing on that document that is not his.

May I ask him, for example, whether that

writing was on there at the time he signed that document.

MR. MARKOWITZ: We would like to know who did write it.

MR. BLEIWAS: He said he doesn't know.

MR. HART: I would like to avoid having the witness speculate.

MR. MARKOWITZ: Who would write that on the interview sheet?

MR. BLEIWAS: Who did write it? It could have been God. There might be 40 people who would write it.

MR. KOMOROFF: Take it easy.

MR. BLEIWAS: The question is patently improper.

MR. KOMOROFF: You are the judge and the jury.

MR. BLEIWAS: Who would write it? Maybe I wrote it.

BY MR. KOMOROFF:

Q What does that signify as a banking man working for Royal and you say that in your official capacity? What would that mean to you?

A Not to pay incoming checks against uncollected

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A N G E L O D. D E L L A T T E, called as a witness by the plaintiff, having been previously sworn, resumed the stand and testified further as follows:

EXAMINATION (cont'd) BY MR. KOMOROFF:

Q This fellow Arnold Dutchen,how long do you kn him?

A 12 years approximately.

Q About how old a man is he?

A About 46.

Q What business is he in?

A Insurance.

Q Where?

A 318 East 149th.

Q You mean general insurance?

A Yes. Real estate, also.

Q Between February 1965 and August 1966, did you discuss with Mr. Dutchen Frank Mazzochi, talk about him as an individual?

A I was introduced by Arnold to other people.

Q Who are those two other people again?

Maybe I have it here.

A You have it. You asked me yesterday.

Haimowitz and I think I mentioned Saul Geltman. They brought him in February.

Q Mr. Dellatte, if my voice sounds a little too loud or if there is a tone of maybe remote anger, please, it is not directed at you, it is just the emotion that goes into the work that I have to perform.

We have a lawsuit and I am just asking you some questions but there is absolutely nothing between the two of us.

You have Lawrence Rothberg here. Is that the other fellow that came in or would you say it is Haimowitz and Saul Geltman?

A Yes.

Q That was on February 10, 1965?

A Yes, when he was first coming in.

Q I think the question was, did you between February 1965 and August 1966 talk to Mr. Dutchen about Frank Mazzochi and about who he was and how he lived an if he was married and what kind of a car he drove and if he was a well to-do man and if his family was rich; were those topics between you and Mr. Dutchen between February 1965 and August 1966?

A No.

February they brought him into the bank and introduced him. That was the first time I met Mr. Mazzochi and that was the three gentlemen I told you.

I used to have coffee breaks with these fellows every morning. We would have coffee across the way and naturally a conversation would get around t Mutual Credit Union and at a later date they said he wa doing very fine for the Credit Union.

MR. HART: "He," meaning Mr. Mazzochi?

THE WITNESS: Yes.

Q What do you mean by very fine?

A He was bringing fresh money into the Credit Union and they were very happy with him, pleased with him. He was doihg a fine job there.

Also I recall that they came in one day, I don't have the date, but they said they had to bring their books down and get Mr. Mazzochi approved, the State Banking Department, which was successful also.

Q When was this?

A I assume after he was voted in as president.

Q Would it be like 1965?

A Yes, I would say so, because that is the time he went into Mutual Credit.

He had to be approved by the Banking Department.

Q To be an officer of Mutual Credit?

A Yes.

Q Who told you about that, Mr. Dutchen?

A Or Mr. Haimowitz, who might have been their attorney.

Q Is he a lawyer, Jacob Haimowitz?

A Yes.

Q In this area?

A Yes.

Q Where?

A 384 East 149th.

Q Saul Geltman, what is he?

A Real estate. Saul was a real estate man.

Q Where?

A 332 East 149th.

Q Is Haimowitz the attorney for the Mutual Cred Union?

A That I don't know.

Q These man, were they in the habit of borrowin money for the Mutual Credit Union at this branch?

A Well, the Mutual Credit Union borrowed money at this branch.

Q Through which offices did they act, did they act through Haimowitz and Geltman?

A This I don't know. That would be credit agai that is not my end.

Q I am interested in knowing all the talks that you had between February 1965 and August 1966 with Dutchen as it concerned the reputation and the characte and the background of Frank Mazzochi.

Have you told us everything that you know or have you given us all of the talks you had?

A There was nothing derogatory about it. I don

at night. The other meetings would be during banking hours.

Q Did you ever meet him with a female companion who would have been his wife or girlfriend?

A No.

Q Do you know what kind of a car he drove?

A No.

Q Was there any talk at any time about the individual assets of Frank Mazzochi, what Frank Mazzochi owned, not that he may have had an interest in Mutual Credit Union which I don't know about, but what did Frank Mazzhoci himself own?

A Never discussed it.

Q Was there any talk at any time about what Frank Mazzochi's family owned?

A No.

Q In your talks with Dutchen, Haimowitz and Geltman, there was never any talk about Frank Mazzochi's personal assets?

A Just his relationship to the Credit Union.

Q Just to the Credit Union?

A Yes.

Q Was there any talk at any time about the liabilities of Frank Mazzochi?

A No.

Q I am, of course, asking you, Mr.Dellatte, about the period of February '65 to August '66.

A Right.

Q Did Mazzochi ever borrow money from this bank during the period of February '65 to August '66?

A That again would be through credit.

Q Well, did he ever sign up as a co-maker or as a borrower from this bank during that same period?

A Same answer. It would be through our credit.

Q Did you know anything about that?

A No.

Q Was there any talk between you, Dutchen, Haimowitz and Geltman about any indebtedness of Mazzoch individually to the bank?

A Never.

Q Was there any talk during that same period between you, Dutchen, Haimowitz and Geltman about securities?

A No.

Q Or about treasury bonds or treasury notes, United States?

A No.

Q That were owned by Mr. Mazzochi?

A No.

Q Or by his family?

A No. Never discussed anything like that.

Q Did you have any knowledge whatever of the financial standing of Frank Mazzochi's immediate family?

A No.

Q Was there any talk at any time between you and these men about where Frank Mazzochi lived?

A No. Just the address but never discussed where he lived.

Q 247 South Third Street, Brooklyn, New York is on the back of Exhibit 25.

Was there any talk at any time about where Frank Mazzochi actually lived?

A No.

Q Did you rely upon this statement on the back of this card before you signed this card to the effect that Mazzochi actually lived at 247 South Third Street, Brooklyn?

MR. HART: When you say "rely," rely fo what purpose? You make it sound as if there was a purpose in relying upon the address and before the witness answers, I would like to know what it is you are talking about or ask the witness

statements there before he sent it and I don't knc that he has testified to that.

If that is true, you can certainly ask him if that is the case but if it isn't, I don't think it is fair to ask him whether he relied on the truth of it when he accepted it.

BY MR. KOMOROFF:

Q Mr. Dellatte, before you signed this card, did you look at both sides of the card?

A Yes, to see ifthe card is filled out sufficie ly.

Q Do you know who handed you this card?

A No. Personally I don't think he handed me the card.

Q Who?

A Mazzochi. I think it was brought in by somebody from the Mutual Credit.

Q Would these other names be of any help to you like you have Solomon Levine on the card, Lawrence Rothberg and David Fassberg?

Do you know those men?

A Sure.

Q Who is Mr. Levine?

A He is in real estate. He banks with us here a

this branch.

Q What is his office address?

A I don't know.

Q What is his home address?

A He lived in the Bronx and moved to Queens, I believe.

Q Lawrence Rothberg, is he an accountant?

A Yes. I met him at a later date after I met Mazzochi. He was brought into the Credit Union.

Q Where did you meet Mr. Rothberg?

A Here at the bank.

Q Was he the accountant for Mutual Credit?

A Originally, I don't believe so.

At a later date when Mazzochi came in, then I met Rothberg.

Q Did you know Fassberg?

A Yes, Dave Fassberg.

Q Where does he live or operate his business?

A Popham Avenue in the Bronx.

Q What business is he in?

A Real estate.

Q Tell me, from February '65 to August '66, did you have any talks with Levine, Rothberg or Fassber concerning the background of Frank Mazzochi?

A No.

Q In other words, your main talks about Frank Mazzochi were those that you had with Dutchen, Haimowit and Geltman?

A Right. Talks that they said he was doing ver well for the Mutual Credit Union.

Q Well, did they elaborate on "very well"? You said before he brought in fresh moneys?

A That is correct.

Q Does that mean he brought in fresh borrowers, too?

A They couldn't lend money out because they are restricted. They have to have so much in reserve.

If you bring in additional moneys, naturally they will make more loans so I assume it works hand in hand.

Q Do you know what the restrictions were?

A No.

Q Do you know how much money they generally kep in balance at this bank?

A No.

Q Do you know how much money in '65 and '66 the Mutual Credit Union had loaned out to its borrowers?

A I wouldn't know.

A Approximately 16 years.

Q How old are you?

A 39.

Q 39 and you were a banking manager at 36?

A Yes.

MR. KOMOROFF: Mr. Hart, I think the witness should answer the questions as he hears them without any suggestion from counsel.

Q You said there was talk at the bank about moneys that were realized on the sale of these Treasury notes and the men here were concerned--

A I didn't say anything like that.

MR. HART: I would like to hear the question.

(The question was read.)

BY MR. KOMOROFF:

Q Tell us, please, Mr. Dellatte.

A You asked if there was any discussion about Mr. Mazzochi and you asked me specifically if it took place some time in August and I said I believed it was in August of '66.

The discussion was to the effect that there were moneys being held in escrow or our suspense account pending verification of the sale of bonds.

Q Do you know what kind of bonds?

A Treasury bonds.

Q They were really Treasury notes?

A Notes, bonds.

Q You knew about that?

A At that time, yes.

Q How did that information come to you, from whom?

A I don't know who came up and asked me.

Q Was it Mr. McGraw?

A No. It is conversation within the bank.

In other words, we would sit down periodicall and discuss accounts and this came to light because of, I guess, the large withdrawals that were being made.

MR. HART: Did the witness say they did usually discuss accounts or did not usually discuss accounts?

THE WITNESS: I said that the discussi came about Mr. Mazzochi because of the large withdrawals being made by him.

MR. BLEIWAS: Off the record.

(Discussion off the record.)

MR. BLEIWAS: Would you read it back?

(The record was read.)

all these transactions started.

He conducted his business, like I said before, very congenial, no trouble, we had no trouble with his accounts at all.

Q When you say "his business," you mean the business of Frank Mazzochi or the business of companies that he was tied up with?

A Companies that he was tied up with.

Q Because he actually didn't open up his own account here until some time around August 8th or 9th of 1966 to accommodate, to receive the proceeds.

A I am referring to the three business accounts.

MR. HART: Wait a minute--

Q When you use the pronoun"his" you don't mean personal accounts?

A Right.

MR. HART: As far as I know, this witne has given no testimony about the opening up of Mr. Mazzochi's personal account or the reasons therefor and I think before you bring that into the questioning of this witness, you ought to establish whether he has any knowledge of it.

Q Did you know that early in August of 1966 around the 8th or the 9th, Frank Mazzochi openedup his

own personal account at this branch?

A No.

Q Do you know that starting around August 8th of 1966 and up until the end of August, Mazzochi came into the bank about 12 times and got checks in five figures cashed on his own personal account, did y know that, in August?

A Yes.

Q How did you find that out?

A Naturally when he would come in and want to withdraw moneys in large amounts, our head teller is directly responsible to the Credit Department--I am sorry--to our operation officer who is in charge which would be Mr. Hoffman.

If the check would be referred out to us, naturally the account was being handled in the bank where the sale of these here Treasury--was taking plac so we would refer it back and this is how we knew.

Q You knew in August of 1966 that Mazzochi had withdrawn substantially $140,000 in cash?

A I didn't know the amount.

Q Did you understand that these were very larg amounts?

A At the latter part of the month, yes. At th

Q Are you giving us the full content of the conversation that you had with Mazzochi?

A Right. We couldn't release those moneys. He was very irate that day. He was very upset he couldn't get the money out of the bank.

Q What was the reason why he couldn't get the money out of the bank?

A It was being held in a suspense account and it was pending an investigation of the securities that were sold.

Q Tell me,how did you react to this?

A In what respect?

Q When Mazzochi told you you couldn't get his moneys out, how did you react to it, were you surprised to hear that?

MR. BLEIWAS: I object to the question.

A No. Naturally I probably asked him why he couldn't withdraw the money, that is how I found out the moneys were being held in suspense.

Q Were you surprised to hear that?

A No, this is a common practice, moneys being held in a suspense account.

Q You told us a little earlier that Mazzochi had a fine reputation?

A His accounts were run in a favorable manner. This is why he wasn't discussed.

Q Weren't you surprised to hear that the bank refused to pay over to him a large sum of money?

A Why would I be surprised? I didn't know the reason.

Q Did you inquire as to why the bank--

A This is when we did inquire.

Q Who is the "we"?

A Hoffman, myself. We found out why the money was being held. This is the natural thing to do.

Q Where did you inquire?

A Back at the Loan Department.

Q Who did you talk to?

A I might have spoken to Mr. Santoro at the time.

Q What did Mr. Santoro say?

A Moneys were being held in suspense.

MR. BLEIWAS: Will you explain what that means?

THE WITNESS: These bonds, notes, Treasuries were sold and we receive a credit through Federal. The moneys were held in the suspense account pending verification that the bonds were

legitimate bonds. After they were cleared, the bonds were cleared and everything, the money would have to be released.

Temporarily, the money is held in a suspense account. It is not credited to his account or anybody's account who was selling it. It is like a layover.

Q What you said now, does that answer apply to the Mazzochi moneys that were put into suspense?

A Yes.

Q Who told you that?

A He told me first himself.

Q Who is "he," Mazzochi?

A Mazzochi.

Q Did any bank officer tell that to you?

A No. We went back--

MR. BLEIWAS: I don't know what you are asking.

Q Did any bank officer here tell you that the moneys were in suspense?

A No.

Q And you got this information only from Mr. Mazzochi?

A Then I went back and verified it with our

A There was nothing to be favorable about. He asked me a question and I went for an answer.

Q You considered Mr. Mazzochi to be a very reputable solid citizen, didn't you, up until you heard about this suspense account?

A Yes, I would say so.

MR. HART: I don't like the implication of "You considered him to be a responsible citizen up until you heard about the suspense account."

Mr. Dellatte has not said that changed hi view of Mr. Mazzochi.

Q Up until the time you had this talk with Santoro, you considered Mazzochi to be a substantial solid citizen?

A As far as being an account in the bank--

Q Why don't you answer the question?

A As far as being an account in the bank in that year, year and a half that he was in the bank, his name never came up because he conducted his business very favorably. We never had problems with him. There was no reason for him to stop and ask me anything.

If he did stop and ask me maybe it was procedural, endorsement on a check, or can this be deposited or a call from the Credit Union saying, "I

am sending someone down who just made a loan."

The man's accounts were run in a very favorabl manner.

Q The image of Frank Mazzochi?

A Was a nice image. He had a nice relationship with the bank.

He was brought in here by very, very reputable people, the people you are mentioning back with us today have been with us 20 years, very well respected people on the street.

Q Did Mr. Goldfine vouch for Mr. Mazzochi at any time?

A I don't know.

Q Do you know how his name got on that card?

A On Mutual Credit? The original Mutual Credit Union accountwas introduced by Mr. Goldfine.

Q Was Mr. Goldfine based at that time at this branch here?

A No, we had our main office downtown.

Q Tell me, in August of 1966, did you have any talks with Mr. McGraw about Mazzochi?

A No.

Q In September of 1966, did you have any talks with McGraw about Mazzochi?

mean.

A Federal Reserve System, Federal Reserve Bank.

Q Where?

A 33 Liberty.

Q You check there?

A Yes. If someone walks in with two or three hundred thousand dollars worth of bonds, this is how we would check them out.

Q What do you mean by check them out?

A Serial numbers, to see if anybody reported th bonds stolen, if a brokerage house reported the bonds stolen.

Q You mean Federal Treasury notes?

A We are all members of the Federal Reserve Bank clearing, we clear through Federal. Naturallly the fastest way to get the banks involved would be from a brokerage house advising Federal to advise all the member banks that maybe 10,000 shares of a certain stock were stolen, serial numbers reading such and such.

Q Now you are talking about shares of stock?

A Or Treasury notes also.

Q I would appreciate it if you confined your responses to the Treasury notes.

A You are asking me what the procedure is and why we went through Federal. This is the procedure.

Q Instead of just saying Federal, would you please give us the full title of the place where you made this inquiry?

A I think it is written there some place. It is Federal Reserve.

Q You mean 33 Liberty Street?

A Yes.

Q Have you ever called them up yourself to check on whether Federal notes or bonds were stolen when you checked the numbers?

Have you done that?

A Have I ever done it before?

Q Yes.

A Many, many years ago when I was in the Loans and Discounts Department.

Q So you have some familiarity with it?

A Yes.

Q Who would you call there to check on whether securities, Federal securities were stolen, whether they had listings?

A I don't know if the departments would be the same today. I am talking about better than 12 years go.

Naturally we would call, I think the number was Rector 2-5700, then someone would ask you and we would say "We would like information," and they would say, "Pertaining to what?" and we would say "We are trying to verify serial numbers on bonds, Treasury notes"or whatever and they would hook us up with a department.

Q What department?

A I don't know the name of it.

Q You say you haven't done it in 12 years?

A Yes.

Q 15 years as of now?

A Yes.

Q Did Mr. Santoro tell you he had checked with the Federal Reserve Bank in downtown New York on the numbers on the Treasury notes to find out if they were listed as being stolen at the Federal Reserve Bank down town?

A This is the reason the moneys were being held in suspense.

Q Did he tell that to you?

A Yes, pending checking out of these Treasuries

Q Did he tell you who he had spoken to there?

A No.

have a familiarity with it, what it looks like, what it feels like and what the contents are on it, am I correct

A Yes.

Q Mr. Dellatte, Exhibit A is a signature card of Mutual Credit Union dated November 29, 1967. That was already after Mazzochi had been arrested?

MR. HART: Please don't answer that question. Unless you can establish that this witness ever knows Mazzochi was arrested--

Q Do you know whether or not Mazzochi was ever arrested?

A At a later date. I heard about it through a newspaper or something that he was arrested.

Q There was no talk at the bank here?

A I had left here. I am away three years this November. I went away I think right after this thing broke. They had opened a new branch and I was put in charge.

Q I show you this exhibit which carries the name of Louis M. D'Agostino as treasurer.

Do you know this gentleman?

A No.

MR. HART: Let the record show that it is part of Defendant Merrill Lynch Exhibit A.

context with which to answer the question?

MR. KOMOROFF: The associates listed on the signature cards.

MR. HART: You mean people employed by Mutual Credit Union?

MR. KOMOROFF: Or the other accounts on which Mazzochi could sign.

MR. HART: Perhaps we better identify the names so we know what we are talking about.

Q Finnog, Ltd. carries the names of Mazzochi and Warren Weinzoff.

Unit Repairs, Inc. carries the names of Mazzochi, Samuel Elster and Max Lerman.

Gilbert you have Warren Weinzoff and and Gilbert.

On Mutual Credit Union you have Haimowitz, Rothberg, Solomon Levine, Manuel Lubow, Saul Geltman.

Up to August of 1966, did the bank inquire orally or otherwise from any of Mazzochi's business associates about Frank Mazzochi, Jr.'s personal net worth?

MR. HART: By his business associates, you are now referring to the names you have just read into the record from the various exhibits

Q Yes.

MR. HART: Don't ask him questions abou his questions.

A No.

Q Do you know whether any inquiries were made by Royal Bank employees about Frank Mazzochi's net wor up to August of '66?

A Not that I know of, no.

Q Before you said you assumed that they did.

A I was trying to answer questions and you jumped right on top of me.

MR. MARKOWITZ: Who jumped on top of you?

THE WITNESS: I was trying to answer something before.

MR. HART: If Mr. Komoroff has a quest to ask you, he will ask you. If he does, answer If not, please don't answer any questions that ar not asked of you.

BY MR. KOMOROFF:

Q I am not clear as to your response.

A Ask me the question again the way you did back before and I will answer it.

Q Did any bank employee inquire orally or othe

from Mazzochi's business associates as I read them off to you a little while earlier about Frank Mazzochi's personal net worth?

A I answered that I didn't personally myself and I don't know whether anyone else did.

Q Do you know if any such inquiry was made up to August 9, 1966 by any bank employee concerning the net worth and financial circumstances of Frank Mazzochi family?

A No.

Q Up to August 1966, did you ever see any financial reports about Frank Mazzochi, Jr.?

A No.

Q Up to August '66, did you have any specific knowledge of the personal assets and liabilities of Frank Mazzochi, Jr.?

A No.

Q Up to August of 1966, did you ever speak with any friends or acquaintances of Frank Mazzochi, Jr. or any bank employees or with any others concerning the personal assets and liabilities of Frank Mazzochi, Jr.?

A No.

Q In August of 1966, what facts did you know about Frank Mazzochi that made you believe that he

personally was a substantial individual financially?

MR. HART: Don't answer that question. That is obviously an improper question, Komoroff. If you want to ask a question as to whether the witness had such a belief, you can ask him that. If he says yes, you can ask him further

MR. KOMOROFF: I will adopt the question that Mr. Hart suggested.

MR. HART: Let's read the question.

(The question was read.)

BY MR. KOMOROFF:

Q Did you believe in August of 1966 that Frank Mazzochi personally was a substantial individual financially?

A No. There was no reason to believe that.

Q Did you see any documents or papers or record up until August 1966 that made you believe that Frank Mazzochi personally was a substantial individual financially?

A No.

MR. BLEIWAS: He testified he didn't so believe.

MR. KOMOROFF: This was a different question.

Q When is the last time you saw one of those?

A Around the same time.

I am sorry. I sold some stock myself, I have confirmations.

Q How recent?

A About three or four months back.

Q Up to 1966, had you seen at any time while functioning at this bank a confirmation of purchase of securities?

A Confirmation of purchase?

Q Yes. You said a minute ago you said you saw a confirmation of sale of securities.

A Yes, I sold personally.

Q You know what a stock brokerage house confirmation looks like?

A Yes.

Q How frequently did you see them here at the bank?

A In 1966?

Q Up to 1966.

A I would say a couple of times a week. I was in operations. I wasn't too familiar with credit.

When I was in Loans and Discounts and note teller, I would see them often.

Q But you are familiar with confirmations from stock brokerage houses?

A Yes.

Q And you are familiar with billings of stock brokerage houses?

A Yes.

Q And you got that knowledge while functioning as a bank officer?

A While I was a clerk.

Q It started as a clerk?

A Yes.

Q Did it also spill into your activities as a bank officer here?

A Yes, but I didn't handle sales of stock for the bank.

Q A little earlier you told us on a Wednesday night you went up to a meeting of the Mutual Credit Union where you met Frank Mazzochi off the bank premises.

A Yes.

Q Did you ever meet Frank Mazzochi off the bank premises on any other occasion?

A No.

Q Do you know if any institutions, banking, stock brokerage houses or otherwise, made any inquiries of

this bank about Frank Mazzochi, Jr., in 1965 and up to September of 1966?

A I wouldn't know.

Q Who would know that?

A Credit again.

Q Tell me, did you ever have any transactions with Frank Mazzochi, Jr. during the years of 1965 and 1966 which are unrelated to bank business?

A No.

Q Tell me, on these other three accounts, not the Mutual, were any of those accounts closed before August of 1966?

MR. HART: You are talking about Finnog, Union, Gilbert?

A I wouldn't know if they were closed.

MR. MARKOWITZ: What about D. Gilbert Contractors?

THE WITNESS: I wouldn't know whether any of the three were closed.

MR. KOMOROFF: The record shows--

THE WITNESS: If the record shows, then they were closed.

MR. MARKOWITZ: Take a look at Exhibit 34, Unit Home Repairs. Was that account closed?

THE WITNESS: If you have the interview sheet. If it were closed, it would be stamped on that.

MR. MARKOWITZ: "CL" at the lower right hand corner.

THE WITNESS: I am sorry. 6/7/66.

MR. HART: Let the witness state for the record what he is referring to. He is referring to Plaintiff's Exhibit 34, the lower right hand corner, this is one of the signature cards for Unit Home Repair, Inc. and state for the record what it is you read in the lower right hand corner and what it means to you.

THE WITNESS: The letters "CL" which mean closed and a date underneath that the account was closed, 6/7/66.

MR. HART: What date is that?

THE WITNESS: June 7, 1966.

MR. MARKOWITZ: Do you know why this account was closed?

THE WITNESS: No.

MR. MARKOWITZ: Who would know?

THE WITNESS: I guess Mazzochi would know. He closed it.

MR. MARKOWITZ: I show you Exhibit 32, Unit Repairs, Inc. Tell us if that account was closed and when.

THE WITNESS: June 8, 1966. Reading from the card "Closed June 8, 1966."

MR. MARKOWITZ: Exhibit 33, tell us if that account was closed and if so, when?

THE WITNESS: The card is also marked "Closed June 7, 1966."

MR. MARKOWITZ: Whose card is that?

THE WITNESS: Unit Home Repairs.

MR. MARKOWITZ: There are three cards for Unit Home Repairs.

THE WITNESS: Yes.

MR. HART: They all indicate the account was closed on June 7th or June 8, 1966.

THE WITNESS: This one is closed June 7th.

MR. MARKOWITZ: On Exhibit 32, there is a name of Samuel Elstein. Would you know who he is?

THE WITNESS: He was one of the officers of Unit Home Repairs.

MR. MARKOWITZ: Was he also connected with Mutual Credit Union?

THE WITNESS: Not that I know of.

produce those.

Q Are these ledger sheets?

A It is a daily balance sheet.

MR. KOMOROFF: I am not sure, Mr. Hart, whether we did make the request but from February 1965 up until August 4, 1966, we would ask that the daily balance sheets as they involved the different accounts with which Mr. Mazzochi was connected, should be produced.

MR. HART: I will try to find out about them. I assume it is still in existence and I imagine we will have no trouble getting them and we will try to produce them for you.

BY MR. KOMOROFF:

Q Mr. Dellatte, you also have as part of your banking practice, an average balance on a card, don't you?

A Yes.

Q Which shows the average balances for each account?

A Correct.

Q Those postings are made when, every month or every week?

A Monthly.

Q There should be such an average balance card for the Mutual Credit, Finnog, Unit Home Repair and Gilbert account, is that right?

A Yes.

MR. KOMOROFF: I will also ask, Mr. Hart, that those cards be produced.

Q How long would it take you to pick out such an average balance card if you wanted to check on the balances of a bank account here, would it take you long?

A Five, ten minutes.

Q As much as that to locate the card?

A I have to come from the front of the bank to the back of the bank and look it up in the file. It would take five minutes. To look up average balances you are asking me. To look up a daily balance, we had the sheet right on our desk.

Q Do you have any idea what the average balance is, let's say, in 1966, were on the Finnog account on which Mazzochi could sign?

A No.

Q Do you have any idea as to the average balances on the Unit Home Repair account that Mazzochi could sign?

A No.

Q Or the Gilbert account?

A No.

Q Or Mazzochi's family's financial background?

A No.

Q Did the other accounts come up, the financial status of the other accounts on which Mazzochi could then sign checks?

A No.

Q Do you know, Mr. Dellatte, of any transactions involving Mazzochi himself or others involving money or property of value beyond $499 prior to August 1966?

A I don't understand the question.

Q I will show you the responses on behalf of this bank which I have received from Mr. Hart and I refer you specifically to interrogatories 46 and 47 and their respective responses and ask you to read them.

Have you read interrogatories 46 and 47 and the responses of the bank thereto?

A Yes.

Q Does your name appear in response to 47 (a)?

A Yes.

Q Can you tell us how prior to August 1966, Mazzochi either for himself or acting for others, had transactions with Royal involving money or property over $499?

A If I had the interview sheets on the three accounts that he opened, it shows the amount of money that he opened each account with, which is in excess of the $499.

D. Gilbert Contractors, $500.

Q Exhibit what?

A Exhibit 36, October 19, 1965, he opened an account with $500, D. Gilbert, which is in excess of the 499.

Q Was this cash, the $500?

A Yes.

This is Exhibit 39. On Finnog, he opened with a $1005 cash. That is over 499. Then there is another one.

Q Unit Home Repairs?

A Unit Home Repairs, he opened on August 6, 1965 with $2400 in cash.

Q The accounts were always opened up with cash?

A Yes. These three accounts were opened with cash.

Q Is that your full answer to the question?

A Yes.

Q Will you be good enough to please look at the responses again and read interrogatory 50 and the bank's

their present addresses.

A I opened the three accounts.

Q You opened the three accounts?

A I opened the three accounts, Finnog, Unit Home and D. Gilbert.

MR. HART: Are you finished with that subject? D. Gilbert was not a corporate account, it was a partnership account.

MR. MARKOWITZ: The record speaks for itself.

BY MR. MARKOWITZ:

Q I show you Exhibit 23 and ask you if these initials opposite the words "References Checked," are yours?

A No, it is McGraw.

It has nothing to do with what is printed there. All we do is initial the sheet that we saw it.

Q Where do your initials appear?

A Right there.

MR. HART: Let the record show the witness has pointed to his initials next to the word "Analysis Dept." towards the bottom of the sheet in the center.

Q Analysis of depositor, analysis of depositor?

in my mind. He would come running out of the bank, over to the tellers, then up to us.

In the year, year and a half that he was coming in the bank, it was always "Good morning, how are you," a gentleman all the time. This is what made it stick in my mind, the fact he acted the way he did that day.

Q If the bank records indicated that the only time Mr. Mazzochi's money was placed in suspense was September of 1966--

A Then it would be September.

Q --you would then say that you might have been mistaken about August and perhaps it was September?

A I figure it was late August. It could be September. That is the only reason it stuck in my mind, the way he acted.

Prior to that he was a very suave sort of fellow.

MR. KOMOROFF: How old did he look to be to you?

THE WITNESS: In his late 20s or early 30s.

MR. KOMOROFF: Was he slim?

THE WITNESS: Yes, well dressed, soft spoken. Nothing crude about the fellow.

MR. BLEIWAS: A gentleman?

THE WITNESS: Yes.

MR. KOMOROFF: What was his weight around August 1966.

THE WITNESS: Between 130 and 150.

MR. KOMOROFF: Little fellow?

THE WITNESS: Yes, small build, but a very polite fellow. We really had no run-in with him at all. His accounts would always run right until what happened.

BY MR. HART:

Q I believe that you testified earlier today that you had no reason to believe that Mr. Mazzochi was a substantial person financially.

Did you have any reason to believe at any time prior to August and September of 1966 that he was not a substantial person financially?

A No.

Q Did you have any knowledge about his personal financial affairs of any sort?

A No.

Q When he walked into the bank, how did he dress?

A He dressed very nice. He liked sport clothes, this, I remember, because he wore sport jackets and so

forth.

Maybe it was the time of the year. He wore nice sport clothes. He never came in looking like a construction worker or anything like that.

MR. KOMOROFF: Did he work full days at this Mutual Credit Union?

THE WITNESS: That I wouldn't know.

Q From the period beginning with February of 1965 and running up to, say, August, September of 1966, about how many times did you have conversations with the gentlemen connected with the Mutual Credit Union that you have referred to before, Mr. Geltman, Mr. Haimowitz and Mr. Dutchen?

A I would say almost five times a week.

We had coffee together in the morning. We would all meet acro ss the way around ten o'clock.

Q During these meetings, did you ever have occasion to talk about Mr. Mazzochi and the relationship he had or the impact he had on the Mutual Credit Union?

A Only at the beginning when he first came in and took over from Mr. Lubow, it might have been a month, a couple of months afterwards.

The first thing that came up was he had to go downtown and be approved by the Banking Department which

he was and had to present the books and so forth and at a later date it was brought out he was doing very nicely for the Credit Union, which was a small credit union, and that he was bringing in fresh money and it was starting to grow.

Q Did anyone ever state whether any of the money ever brought into the Credit Union was his own?

A No.

Q Was the subject of whether it was his own money ever brought up at all at any of these talks?

MR. MARKOWITZ: I assume you are talking about the fresh money?

MR. HART: Yes, that the witness has said was brought in.

A No, there would be depositors' money. We use the term bringing into like bringing into the bank, the same thing as bringing into the Credit Union, bringing in new depositors.

You buy shares and you get a book and you borrow money.

MR. KOMOROFF: In Yiddish is that called an Oxia?

MR. HART: Would you tell me what an Oxia is?

THE WITNESS: No. Just the reason the money was being held in suspense pending verification that the securities weren't stolen.

MR. KOMOROFF: Did he tell you who had started this inquiry at the Federal Reserve Bank to check on the ownership of these securities?

THE WITNESS: No.

MR. KOMOROFF: Didn't even talk about it?

THE WITNESS: No.

MR. KOMOROFF: How long did you have this talk with Santoro, a minute or two?

THE WITNESS: Yes. I walked down and walked back up and told Mazzochi that the moneys are being held in there panding verification that the securities weren't stolen.

MR. KOMOROFF: Were you still having coffee with those gentlemen from Mutual Credit around this time?

THE WITNESS: Surely.

MR. KOMOROFF: Was there talk around the coffee table about the suspense account?

THE WITNESS: No. I don't think they were aware of anything happening at the beginning until later on when it broke. I think they were

were referring to normal practice and papers, you were referring solely to the finalization of what the bank required in order to open up an account, is that right.

THE WITNESS: Right, the mechanics to opening up the account.

MR. MARKOWITZ: That wasn't the case with Mazzochi?

THE WITNESS: I don't know how his account was opened. That was a personal account.

MR. MARKOWITZ: You did say it was being held in suspense pending an investigation at the Federal Reserve Bank to find out whether the securities were stolen.

THE WITNESS: Correct. The moneys were held in suspense.

MR. MARKOWITZ: You don't do that every occasion the bank is asked to sell securities or treasury notes?

THE WITNESS: What do you mean we don't do it on every occasion?

MR. BLEIWAS: Assume for a moment, Mr. Dellatte that the proceeds for the sale of the treasury notes were to be deposited into the account

of Mutual Credit, the existing account.

Would the money have then been held in suspense by this bank?

THE WITNESS: The bonds or the treasuries would have to belong to Mutual Credit.

MR. BLEIWAS: Let's take these notes specifically. Once you were satisfied that they were not stolen and request had been made they be sold for the account of Mutual Credit--

THE WITNESS: They weren't sold for Mutual Credit. Assume a representative of Mutual Credit came in and said "Sell these for us."

MR. BLEIWAS: You would then check to see they were not stolen?

THE WITNESS: Right.

MR. BLEIWAS: Would the money then have been put in suspense or would Mutual Credit be permitted to withdraw immediately?

THE WITNESS: As soon as we received the credit, a check in payment of the sale of the security, we would credit the account.

MR. BLEIWAS: And they could have withdrawn then without the funds going into suspense?

THE WITNESS: That is right.

MR. BLEIWAS: That is because this was now an existing account as opposed to what happened here where Mr. Mazzochi opened a new account?

THE WITNESS: The proceeds was used to open a new account.

MR. BLEIWAS: And the fact a new account was being opened that the moneys were put into suspense?

THE WITNESS: I would say because of the amount of the securities that were being sold.

MR. MARKOWITZ: In other words, it was the size of the transaction--

THE WITNESS: He gave me an example--

Mk. HART: Do you know why this money was put into suspense? Did you have anything to do with putting it into suspense?

THE WITNESS: No.

MR. HART: Then you don't really know why this money was put into suspense except somebody told you the money was put into suspense pending an investigation and that was Mr. Santoro, and this is speculation as to what might have happened?

THE WITNESS: If you want to call it speculation, yes.

MR. HART: Then we should wait for Mr. Santoro.

MR. MARKOWITZ: To your knowledge, however, in this particular instance, and I am talking about Mazzochi cashing or having the bank convert the treasury notes into cash, the reason why it was put in the suspense account was only because it was pending an investigation at the Federal Reserve Bank to determine whether or not these treasury notes were stolen, am I correct?

THE WITNESS: That the money was put in there just pending the investigation that the securities weren't stolen, that they were legitimate securities, yes.

MR. KOMOROFF: Do you know why that same investigation wasn't made when Mazzochi came in on August 4th and 5th?

THE WITNESS: Who said it wasn't made? I am sure it was.

MR. KOMOROFF: An investigation was made as to the ownership?

THE WITNESS: Not ownership. As to whether or not the treasury notes were stolen. I am sure it was.

MR. MARKOWITZ: But you don't know of your own knowledge?

THE WITNESS: No.

MR. MARKOWITZ: What makes you say you are sure it was?

THE WITNESS: This is the procedure.

MR. MARKOWITZ: In large transactions only?

THE WITNESS: If someone walked in who wasn't known to the bank, we would do the same thing also.

If a customer walked in or potential customer and said, "Could you sell for me so many securities," I don't know them, we are looking to get the business, we try to get an account out of them and check them out and see if they know anybody in the bank or connected with anybody in the bank where we could immediately reach for a phone and get a connection and try to get an account, but all the precautions would be taken.

MR. KOMOROFF: Were those precautions taken when Mazzochi brought in the first batch of treasury notes?

THE WITNESS: I don't know, because I didn't do it. That would be Mr. Santoro.

A 202 Affidavit of Personal Service of Papers

LUTZ APPELLATE PRINTERS, INC.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES FIDELITY & GUARANTY CO.,
Plaintiff- Appellant,

- against -

ROYAL NATIONAL BANK OF NEW YORK &
MERRIL LYNCH PIERCE FENNER & SMITH INC.,
Defendants- Appellees.

Index No.

Affidavit of Personal Service

STATE OF NEW YORK, COUNTY OF NEW YORK *ss.:*

I, James A. Steele *being duly sworn,*
depose and say that deponent is not a party to the action, is over 18 years of age and resides at
310 West 146th Street, New York, New York
That on the 27th *day of* May *19* 76 *at* 1) 10 East 40th Street, New York, New York
2) 11 Park ~~Row~~ Place, New York, New York
deponent served the annexed Appendix ~~Brief~~ *upon*
1) Hart & Hume
2) Konheim, Halpern & Beleiwas
the Attorneys *in this action by delivering a true copy thereof to said individual personally. Deponent knew the person so served to be the person mentioned and described in said papers as the herein.*

Sworn to before me, this 27th
day of May *19* 76

Robert T. Brin

ROBERT T. BRIN
NOTARY PUBLIC, State of New York
No. 31 0418950
Qualified in New York County
Commission Expires March 30, 1977

James A. Steele

JAMES A. STEELE